

AUG 14 1995

IN THE
Supreme Court of the United States

CLERK

OCTOBER TERM, 1995

SAMUEL LEWIS, *et al.*,
v. *Petitioners,*

FLETCHER CASEY, JR., *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

JOINT APPENDIX

DANIEL P. STRUCK *
KATHLEEN L. WIENEKE
DAVID C. LEWIS
EILEEN J. DENNIS
JONES, SKELTON & HOCHULI
2901 N. Central Avenue
Suite 800
Phoenix, Arizona 85012
(602) 263-1700

J. GRANT WOODS
TIM DELANEY
THOMAS J. DENNIS
OFFICE OF THE ATTORNEY
GENERAL
1275 W. Washington Street
Phoenix, AZ 85007-2997

REX E. LEE
CARTER G. PHILLIPS
MARK D. HOPSON
JACQUELINE GERSON
SIDLEY & AUSTIN
1722 I Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Attorneys for Petitioners

ELIZABETH ALEXANDER *
ACLU NATIONAL PRISON PROJECT
1875 Connecticut Avenue, N.W.
Suite 410
Washington, DC 20009
ALICE L. BENDHEIM
1542 West McDowell Road
Phoenix, Arizona 85007
Attorneys for Respondent

* Counsel of Record

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
(PHOENIX)

Docket No. 90-CV-54

CASEY, *et al.*

v.

LEWIS, *et al.*

RELEVANT DOCKET ENTRIES

DATE	No.	PROCEEDINGS
3/28/91	126	AMENDED COMPLAINT by plaintiffs (by stip) [1-1] (ce) [Edit date 03/28/91] * * *
4/26/91	175	MOTION for partial summary judgment by defendant [175-1] (jh) [Entry date 05/02/91]
4/26/91	176	MEMORANDUM of P&As IN SUPPORT by defendant motion for partial summary judgment by defendant [175-1] (jh) [Entry date 05/02/91]
4/26/91	177	STATEMENT OF FACTS by defendant re motion for partial summary judgment by defendant [175-1] [175-1] (jh) [Entry date 05/02/91]
4/26/91	178	AFFIDAVIT of Gail A Parin (jh) [Entry date 05/02/91]
4/26/91	179	AFFIDAVIT of J. C. Keeney (jh) [Entry date 05/02/91] * * *

DATE	No.	PROCEEDINGS
5/13/91	191	MOTION for partial summary judgment by defendant [191-1] (ce) [Entry date 05/15/91]
5/13/91	192	STATEMENT OF FACTS by defendant re motion for partial summary judgment by defendant [191]. (ce) [Entry date 05/15/91]
5/13/91	193	MEMORANDUM p/a by defendant re [191]. (ce) [Entry date 05/15/91] * * * *
5/13/91	195	AFFIDAVIT of J.C. Keeney (ce) [Entry date 05/15/91]
5/13/91	196	AFFIDAVIT of Gail Parin (ce) [Entry date 05/15/91] * * * *
5/30/91	210	RESPONSE by plaintiffs and Class to motion for partial summary judgment by defendant [191.]. (ce) [Entry date 05/31/91]
5/30/91	211	STATEMENT OF FACTS by plaintiff in re to dfts s/j mtn [210-1] (ce) [Entry date 05/31/91] * * * *
6/14/91	220	REPLY by defendant to response to motion for partial summary judgment by defendant [191-1] (ce) [Entry date 06/17/91]
6/14/91	221	STATEMENT OF FACTS defendant insuprt of motion reply [220]. (ce) [Entry date 06/17/91] * * * *
6/27/91	226	ORDER by Judge C.A. Muecke denying motion for partial summary judgment by defendant [191-1] (cc: all counsel) (ce) * * * *

DATE	No.	PROCEEDINGS
9/16/91	244	MOTION in limine by defendants (to exclude inmate grievances and inmate kites at trial) [244-1] (ce) [Entry date 09/18/91]
9/16/91	245	MEMORANDUM by defendant re [244-1] (ce) [Entry date 09/18/91] * * * *
9/23/91	254	RESPONSE by plaintiff to motion in limine by defendants (to exclude inmate grievances and inmate kites at trial) [244-1] (ce) [Entry date 09/24/91] * * * *
9/30/91	263	REPLY by defendant to response to motion in limine by defendants (to exclude inmate grievances and inmate kites at trial) [244-1] (ce) [Entry date 10/10/91] * * * *
10/21/91	267	ORDER by Judge C A. Muecke 1) granting motion in limine by plaintiffs to exclude cert specified evidence [246-1] 2) granting in part and den in part motion in limine by defendants (to exclude inmate grievances and inmate kites at trial) [244-1] [see doc for full details] (cc: all counsel) (ce) * * * *
11/15/91	291	STIPULATION of facts by ptys cnsl as a result of Alhambra, ACW, ASP-Douglas, ASP-Florence, ASP-Tucson, ASP-Perryville & ASP-Winslow tour. (ce) [Entry date 11/19/91] * * * *
12/6/91	299	Court Reporter's Transcript of Proceedings for the following date(s): 11/22/91, (ce)

DATE	No.	PROCEEDINGS
1/2/92	319	Court Reporter's Transcript of Bench Trial Proceedings for the following date(s): 12/17/91 (ce) [Entry date 01/03/92]
1/2/92	320	Court Reporter's Transcript of Bench Trial Proceedings for the following date(s): 12/18/91, (ce) [Entry date 01/03/92]
1/2/92	321	Court Reporter's Transcript of Bench Trial Proceedings for the following date(s): 12/19/91, (ce) [Entry date 01/03/92] * * * *
1/15/92	325	Court Reporter's Transcript of Proceedings for the following date(s): 1/7/92 (jh) [Entry date 01/16/92]
1/15/92	326	Court Reporter's Transcript of Proceedings for the following date(s): 1/8/92(jh) [Entry date 01/16/92]
1/15/92	327	Court Reporter's Transcript of Proceedings for the following date(s): 1/9/92 (jh) [Entry date 01/16/92] * * * *
1/22/92	329	Court Reporter's Transcript of Proceedings for the following date(s): 1/14/92 (jh) [Entry date 01/27/92]
1/22/92	330	Court Reporter's Transcript of Proceedings for the following date(s): 1/15/92 (jh) [Entry date 01/27/92]
1/22/92	331	Court Reporter's Transcript of Proceedings for the following date(s): 1/16/92 (jh) [Entry date 01/27/92] * * * *
2/7/92	335	Court Reporter's Transcript of Proceedings for the following date(s): 1/27/92 (jh) [Entry date 02/11/92] * * * *

DATE	No.	PROCEEDINGS
5/29/92	360	PROPOSED FINDINGS OF FACT and conclusions of law subtd by dfts. (ce) [Entry date 06/01/92] [Edit date 06/02/92] * * * *
5/29/92	362	PROPOSED FINDINGS OF FACT and conclusions of law submitted by plths. (ce) [Entry date 06/02/92] [Edit date 06/02/92] * * * *
8/14/92	366	REPLY by pla to dfts findings of fact [360-1] (ce)
8/14/92	367	RESPONSE by dft to pltf's findings of fact [362-1] (ce) [Entry date 08/17/92] * * * *
11/16/92	385	FINDINGS OF FACT and conclusions of law-Access to the Courts by Judge C A. Muecke (cc: all counsel) (cn)
11/25/92	386	ORDER by Judge C A. Muecke appointing Daniel J Pochoda as Special Master & Janet Bliss as Asst Special Master, see ord for further details (cc: all counsel) (re: order [386-1] (cn) * * * *
12/17/92	389	NOTICE OF APPEAL by dft from District Court [385-1] (cc: 9CCA/All Counsel) (dl) [Entry date 12/21/92] * * * *
12/18/92	388	MOTION for a stay of its order dated 11/20/92 by dfts in 2:90-cv-00054 [388-1] (cn) [Entry date 12/21/92]
12/30/92	390	MOTION for accelerated disposition of motion for a stay of its order dated 11/20/92 by dfts in 2:90-cv-00054 [388-1] (cn) [Entry date 12/31/92]

DATE	No.	PROCEEDINGS
12/31/92	391	SUPPLEMENT to dfts' mtn to stay by dfts in 2:90-cv-00054 (cn) [Entry date 01/04/93]
1/8/93	392	Pltf's opposition in 2:90-cv-00054 to motion for a stay of its order dated 11/20/92 by dfts in 2:90-cv-00054 [388-1] (cn)
1/12/93	393	SUPPLEMENT to dfts' mtn to stay [388-1] in 2:90-cv-00054 (cn) [Entry date 01/15/93]
		* * * *
1/22/93	395	DFTS' OBJECTIONS to implementation of the Gluth injunction in particular facilities in 2:90-cv-00054 (cn) [Entry date 01/25/93]
		* * * *
2/5/93	396	ORDER by Judge C A. Muecke: Spec Mastr & Asst Spec Mastr monitor case w/i confines of monitoring Casey v Lewis, 90-54; consistent w/11/20/92 ord in 90-54, Asst Spec Mastr s/b pd \$65 p/hr; clk of crt file attchd ltr frm Spec Mastr into CV-84-1626; clk of crt file cy of this ord into CV-90-54 (cc: all counsel) (re: order [396-1] (jh)
		* * * *
2/9/93	398	SECOND MOTION to accelerate disposition of motion for a stay of its order dated 11/20/92 by dfts [388-1] (mp) [Entry date 02/12/93]
		* * * *
2/19/93	400	Dfts' additional objections/modifications to implementation of the Gluth injunction to particular facilities (cn) [Entry date 02/22/93]
		* * * *
3/19/93	405	OBJECTIONS by dfts to plas' proposed modifications to Gluth order [386-1] (cn) [Entry date 03/22/93]
		* * * *

DATE	No.	PROCEEDINGS
4/28/93	419	DFTS' ADD'L OBJECTIONS to plas' proposed modifications (cn) [Entry date 04/29/93]
		* * * *
5/10/93	429	ORDER by Judge C A. Muecke the Spec Mstr & Asst Spec Mstr sh investigate to determine whether dfts hv directed employees not to speak to the Spec Mstr or Asst Spec Mstr in their investigation of the access to the crts issues in this case and/or the Gluth case & whether dfts hv fired the employee in retaliation for speaking to the Asst Spec Mstr; Spec Mstr & Asst Spec Mstr sh hv all of the authority already ord in addition they sh hv the authority to conduct hrgs & subpoena & question witnesses under oath including employees of the ADOC; they sh also make recommendations as to whether, if allegations are true, dfts hv violated Crt's previous ords, including ords setting forth the authority & duties of Spec Mstr & Asst Spec Mstr; they sh also make recommendations as to whether, if allegations are true, what sanction(s) and/or action(s) are appropriate, including, contempt proceedings & reinstatement of the employee allegedly discharged in retaliation (cc: all consl) (re: order [429-1] (cn)
		* * * *
5/18/93	431	ORDER by Judge C A. Muecke IT IS ORD that the Spec Mstr is directed to report his findings on a) were any of the negative actions involving the Florence law librarian materially attributable to either his cooperating w/the Spec Mstr's ofc or his attempts to comply w/the Gluth final perm injunc, b) have dfts made a good faith effort to comply w/Section I(G) of the Gluth final

DATE	No.	PROCEEDINGS
		perm injunc c) have dfts seriously interfered w/the Spec Mstr's direct access to ADOC personnel & prisoners as required by the Gluth & Casey orders; after the Spec Mstr has made these findings, the Crt will consider what, if any, sanctions & actions are required (cc: all counsel) (re: order [431-1] (cn)
5/24/93	432	PLAS' RESPONSE to dfts' objections dated 4/28/93 (add'l objections to the modification & implementation of the Gluth order) [419-1] (cn)
5/24/93	433	MOTION to disqualify special master by dft [433-1] (cn) [Entry date 05/25/93]
5/24/93	434	DFTS' MEMORANDUM IN SUPPORT of motion to disqualify special master [433-1] (cn) [Entry date 05/25/93]
		* * * *
5/26/93	436	ORDER by Judge C A. Muecke granting motion for expedited disposition by dfts (re: mtn to disqualify) [435-1], denying motion to disqualify special master by dft [433-1] (cc: all counsel) (cn)
5/28/93	437	ORDER by Judge C A. Muecke RE: I. Procedure for objections to billing of Special Master & II. Clarification of particular objections allowed and the role of the Special Master III. (cc: all counsel) (re: order [437-1] (cn)
		* * * *
5/28/93	439	ORDER by Judge C A. Muecke denying motion for a stay of its order dated 11/20/92 by dfts [388-1] (cc: all counsel) (cn)
		* * * *

DATE	No.	PROCEEDINGS
8/13/93	450	Dfts' objections to the Special Master's proposed order (cn) [Entry date 08/16/93]
9/7/93	451	MOTION dismsis dfts' objections dated 8/13/93 by pla in 2:90-cv-00054 [451-1] (cn) [Entry date 09/09/93]
9/7/93	452	MEMORANDUM of points and authorities in support of mtn to dismiss dfts' objections dated 8/13/93 [451-1] (cn) [Entry date 09/09/93]
9/13/93	453	DFTS' RESPONSE to motion dismiss dfts' objections dated 8/13/93 by pla [451-1] (cn) [Entry date 09/14/93]
9/13/93	454	MEMORANDUM of Points and Authorities in support of dfts' response to plas' mtn to dismiss dfts' objections to the Special Master's proposed order by dfts [453-1] (cn) [Entry date 09/14/93]
9/22/93	455	PLAS' REPLY to response to motion dismiss dfts' objections dated 8/13/93 by pla in 2:90-cv-00054 [451-1] (cn) [Entry date 09/24/93]
		* * * *
9/29/93	459	ORDER by Judge C A. Muecke denying motion dismiss dfts' objections dated 8/13/93 by pla [451-1]; however, in his preparation of the final injunction, the Special Master has the discretion to disregard any objections or claims that were made for the first time in the final objections filed on 8/13/93 and any objections that are not supported by the evidence (cc: all counsel) (cn)
		* * * *
10/13/93	463	ORDER by Judge C A. Muecke that the permanent injunction, as proposed by the Special Master, is adopted by the Court (cc: all counsel) (re: order [463-1] (cn)

DATE	No.	PROCEEDINGS
10/13/93	464	PERMANENT INJUNCTION ACCESS TO THE COURTS ISSUES by Judge C A. Muecke re: Law Libraries, Legal Assistance Program, Legal Svcs & Supplies, Indigent Prisoners, Implementation (see 28 pg perm injunction & order appendices for further details) (cc: all counsel) (re: permanent injunction [464-1] (cn)
10/20/93	465	ORDER by Judge C A. Muecke status hearing set for 12/10/93 at 10:00 (cc: all counsel) (cn)
10/29/93	466	ORDER by Judge C A. Muecke dfts shall maintain on file in each law library within the ADOC sufficient copies of the permanent injunction [464-1] to allow the inmates to examine the injunction. Any inmate who requests to see a copy of the injunction shall be allowed to examine the injunction. (cc: all counsel) (cn) * * * *
11/22/93	474	MOTION to stay order of 10/13/93 by dfts [474-1] (cn) [Entry date 11/23/93] [2:90 cv54]
11/22/93	475	MOTION for accelerated disposition of motion to stay order of 10/13/93 by dfts [474-1] (cn) [Entry date 11/23/93] [2:90cv54] * * * *
12/7/93	479	ORDER by Judge C A. Muecke the Clerk of the Court shall file the Report and attachments submitted by the Asst Special Master & send copies of the Report to counsel for the plas and dfts in this action. In addition to the mental health care issue, counsel for the parties should be prepared to discuss the violations of the access to the courts Injunction at the Status Conference scheduled for

DATE	No.	PROCEEDINGS
		12/10/93. Dfts are advised that continued violations will result in contempt of court. (cc: all counsel) (re: order [479-1] (cn) [2:90cv54]
12/7/93	480	MEMORANDUM & attachments submitted by Asst Special Master Janet Bliss (ordered filed by Order [479-1] of 12/7/93 (cn) [2:90cv54]
12/8/93	481	RESPONSE by pla to motion to stay order of 10/13/93 by dfts [474-1] (cn) [2:90cv 54] * * * *
12/14/93	488	ORDER by Judge C A. Muecke (re: permanent injunction [464-1] dfts shall file monthly written reports with the court setting forth what they have done to comply with the permanent injunction; first report due no later than 1/31/94, each subsequent report shall be filed on the last day of the month, copies to be sent to opposing cnsl and office of Special Master status report due 1/31/94 (cc: all counsel) (seal) [Entry date 12/15/93] [2:90cv54] * * * *
12/23/93	492	ORDER by Judge C A. Muecke that no later than 1/20/94 parties shall file written memoranda setting forth their position RE: scope of the access to the courts injunction in CASEY relevant to the Central Unit of Florence, which is under the GLUTH injunction (cc: all counsel) (re: order [492-1] (mm) [Entry date 12/27/93] [2:90cv54] * * * *
1/6/94	495	ORDER by Judge C A. Muecke that any intentional failure by dfts to comply with Order concerning the powers of the Office of Special Master will be considered con-

DATE	No.	PROCEEDINGS
		tempt of court & is subject to immediate hearing & possible sanctions. (cc: all counsel) (re: order [495-1] (cn) [2:90cv54])
		* * * *
1/14/94	497	ORDER by Judge C A. Muecke denying motion to stay order of 10/13/93 by dfts [474-1] (cc: all counsel) (cn) [2:90cv54]
		* * * *
1/20/94	500	MEMORANDUM regarding application of Casey v. Lewis legal access order to the central unit by dfts (all) (sb) [Entry date 01/24/94] [2:90cv54]
		* * * *
1/31/94	501	STATUS REPORT by dft's (all) regarding implementation of legal access injunction (sb) [Entry date 02/01/94] [2:90cv54]
2/8/94	502	ORDER by Judge C A. Muecke that the Special Master shall examine the doc of dfts' survey and investigate all of the units to determine the accuracy; report setting forth the assessment of the Special Master due 2/28/94; if hearings are necessary, the Special Master will probably conduct the hearings the week of 3/28/94 . . . see doc for full details (cc: all counsel) (sb) [2:90cv54]
2/9/94	503	AMENDED STATUS REPORT by dft regarding implementation of legal access injunction (sb) [Entry date 02/10/94] [2:90cv54]
2/9/94	504	MOTION for reconsideration by dfts [504-1], for clarification by dfts [504-2] (sb) [Entry date 02/10/94] [2:90cv54]
2/9/94	505	MEMORANDUM IN SUPPORT by dfts of motion for reconsideration by dfts [504-1], motion for clarification by dfts [504-2] (sb) [Entry date 02/10/94] [2:90cv54]

DATE	No.	PROCEEDINGS
2/11/94	506	ORDER by Judge C A. Muecke that no later than 2/16/94 this order shall be posted in a clearly visible manner in each ADOC law library. The Special Master shall check on this posting and shall mail or deliver both of these orders to relevant ADOC personnel [sic] including librarians. This order shall remain posted in each ADOC law library within the state (cc: all counsel) (re: order [506-1] (sb) [2:90cv54])
2/11/94	507	ORDER by Judge C A. Muecke that NLT 2/18/94 dfts shall provide the Special Master's Office all of the info and items requested; the 2/28/94 compliance status report shall include copies of the revised DMO's and DMP's covering all the areas or mandates mentioned in the final permanent inj; NLT 2/18/94 the dfts shall provide the Ass Special Master with current computer listings of the names of inmates confined in each unit covered by the Casey order . . . see doc for details (cc: all counsel) (re: order [507-1] (sb) [2:90cv54])
2/15/94	508	SUPPLEMENTAL ORDER by Judge C A. Muecke that dfts shall provide the above DMO's and DMP's for the February report and each future monthly report on computer disk to the Office of Special Master . . . see doc for full details (cc: all counsel) (re: order [508-1] (sb) [2:90cv54])
		* * * *
2/28/94	512	STATUS REPORT regarding implementation of legal access injunction by dfts (sb) [Entry date 03/01/94] [2:90cv54]
		* * * *
3/3/94	514	ORDER by Judge C A. Muecke that the Assistant Special Master deliver the typewriter

DATE	No.	PROCEEDINGS
		to the appropriate unit. The ADOC shall not deny inmates typewriters allowed under the permanent injunction (cc: all counsel) (re: order [514-1] (sb) [2:90cv54]
3/7/94	515	ORDER by Judge C A. Meucke that dfts and employees of the dfts appear before the Special Master during the week of 3/28/94 to show cause why they should not be held in contempt for their failure to comply with any provisions of the permanent injunction. The Special Master shall submit Findings of Fact to this court NLT 4/20/94 setting forth specifically what the dfts have done to comply with each provision of the permanent injunction . . . see doc for full details (cc: all counsel) (re: order [515-1] (sb) [2:90cv54]
		* * * *
3/18/94	519	ORDER by Judge C A. Muecke (re clarification of Gluth permanent injunction) (cc: all counsel) (re: order [519-1] (la) [2:90cv54]
		* * * *
3/18/94	521	COMPLIANCE REPORT by Assistant Special Master (sb) [Entry date 03/21/94] [2:90cv54]
3/18/94	522	EXHIBITS to Compliance Report by Assistant Special Master (Re: [521-1] 1-34) (sb) [Entry date 03/21/94] [2:90cv54]
3/18/94	523	EXHIBITS to Compliance Report by Assistant Special Master (Re: [521-1] 35-94) (sb) [Entry date 03/21/94] [2:90cv54]
		* * * *
3/25/94	526	ORDER by Judge C A. Muecke clarifying the authority of the Office of the Special Master to hire additional professionals [sic] to carry out duties of the Office of the Special Master (cc: all counsel) (re: order [526-1] (sb) [2:90cv54]

DATE	No.	PROCEEDINGS
3/25/94	527	ORDER by Judge C A. Muecke denying motion for reconsideration by dfts [504-1], granting, to the limited extent set forth in the order, motion for clarification by dfts [504-2] (cc: all counsel) (sb) [2:90cv54]
		* * * *
3/31/94	530	REPORT by all dfts rearding implementation of leal access injunction (sb) [Entry date 04/04/94] [2:90cv54]
6/7/94	548	TRANSCRIPT of status hearing by Court Reporter: Vicki Reger for the following date(s): 5/5/94 (sb)
		* * * *
4/3/95	583	ORDER by Judge C A. Muecke that nlt 4/12/95 the dfts may challenge any of the fees of the Special Master to this adte based on the standard set forth. For any fees challenged, dfts must file a memo of p/a; as soon, as the stay is lifted in this case the Special Master shl investigate and file his findings re: the proper indigence standard; as soon as the stay is lifted in this case the Special Master shl investigate and file his findings re: the cost of photocopies to the dft (cc: all counsel) re: order [583-1] (mp) [2:90cv54]
		* * * *
4/24/95	595	OBJECTIONS by all dfts to special master fees (order [583-1]) (sb) [Entry date 04/25/95] [2:90cv54]
4/24/95	596	MEMORANDUM by all dfts in support of objection to Special Master fees [595-1] (sb) [Entry date 04/25/95] [2:90cv54]
		* * * *
5/2/95	600	OBJECTIONS by all dfts to Court's order of April 3, 1995 referring additional duties

DATE	No.	PROCEEDINGS
		to the special master [583-1] (sb) [Entry date 05/08/95] [2:90cv54]
5/2/95	601	MEMORANDUM by all dfts in support of dft's objections to Court's April 3, 1995 order referring additional duties to the special master [600-1] (sb) [Entry date 05/08/95] [2:90cv54]
5/3/95	599	ORDER by Judge C A. Muecke denying motion to clarify by all dfts [594-1]; Special Master shall have until 6/15/95 to respond to defts objections; Special Master and Ass Special Master shall be reimbursed for the time spent responding to dfts objections (cc: all counsel) (sb) [2:90cv54]
		* * * *
5/30/95	611	ORDER by Judge C A. Muecke; although the 9CCA has remanded some issues regarding access to the courts, the Supreme Court has granted review of the access to the courts portion of the case on a writ of certiorari; therefore, it appears that the Supreme Court stay remains effective and this court will not act on those matters remanded by the 9CCA, including the challenge to the Special Master's fees, until the Supreme Court renders its decision or until a higher court directs this court otherwise re: appeal [470-1] (cc: all counsel/9CCA) (rew) [2:90cv54]
		* * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 93-17169

CASEY, *et al.*

v.

LEWIS, *et al.*

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
	* * * *
3/14/94	Filed Appellant Samuel A. Lewis emergency motion to stay the Injunctive Order of the District Court pending final outcome of this appeal; served on 3/11/94 (CIVATT) (tm)
3/16/94	Filed Appellant Samuel A. Lewis's motion to file oversized brief; served on 3/15/94 (CIVATT) [93-17169] (tm) [Entry date 03/21/94]
3/18/94	Filed Appellee Fletcher Charles Casey response; served on 3/17/94 (CIVATT) [93-17169] (tm)
3/21/94	Received Appellees' two corrected pages of appellees' Response to Emergency Motion to Stay; served 03/18/94 (CIVATT) [93-17169] (tm) [Entry date 03/23/94]
3/22/94	Filed Appellant Samuel A. Lewis reply to response to emergency motion for stay; served on 3/21/94 (CIVATT) [93-17169] (tm)
3/25/94	Filed order (Betty B. FLETCHER, Stephen S. TROTT): Appellants' emergency motion to stay implementation of the d.c.'s 10/13/93 order is

DATE	PROCEEDINGS
	denied. Appellants' motion to exceed the page limit of the brief is granted in part. Appellants' opening [sic] brief, not to exceed 45 pages, is due 04/04/94. Appellees' brief is due 05/05/94. The optional reply brief is due 14 days from service of appellees' brief. (Atys' telephoned at 11:15 am) (tm) [Edit date 03/25/94]
4/6/94	Filed Original and 15 copies Appellant Samuel A. Lewis opening brief (Informal: n) 445 pages and five excerpts of record in 1 volumes; served on 4/4/94 [93-17169] (tm)
	* * *
4/25/94	Filed copy of certified Supreme Court order granting a temporary stay of the injunctive order issued 10/13/93. (SC Date: 4/18/94) [93-17169] (crw)
	* * *
5/6/94	Filed Supreme Court order (SC Date: 5/2/94) The application for stay of enforcement of the injunctive order of the USDC/Arizona issued 10/13/93, is granted pending timely filing and disposition by SC of a petition for cert. Should the petition for cert. be denied, this stay terminates automatically. If petition for cert. is granted this stay shall continue pending sending down of judgment of SC. See casefile for full wording. [93-17169] (mlm) [Entry date 05/10/94]
	* * *
6/9/94	Filed original and 15 copies Appellee Fletcher Charles Casey brief, 45 pages, 1 Exc. vols: served on 6/8/94 minor defcy: statement of related cases, Notified counsel regarding concerns regarding footnotes (FRAP 32) [93-17169] (tm) [Entry date 06/15/94]
6/16/94	Received Appellee Fletcher Charles Casey satisfaction of (minor) brief deficiency (Statement of Related Cases) [93-17169] (tm)
	* * *

DATE	PROCEEDINGS
7/7/94	Filed original and 15 copies Samuel A. Lewis reply brief, (Informal: n) 21 pages; served on 7/6/94 [93-17169] (tm)
7/31/94	Arizona prison officials appeal the dc's order, in a 42 U.S.C. sec 1983 class action, finding that prisoners were unconstitutionally denied meaningful access to the courts and issuing a permanent injunction imposing on the Arizona Dept. of Corrections a legal access plan.
	ISSUES:
	1. Did the dc err in concluding that prison officials unconstitutionally denied inmates their right of access to the courts because all the following were constitutionally adequate:
	a. the contents and access to libraries;
	b. access to courts of illiterate of non-English speaking prisoners;
	c. library staffing;
	d. legal assistance;
	e. indigency standard;
	f. photocopying [sic] policy?
	g. telephone call policy?
	2. Did the dc abuse its discretion in awarding injunctive relief beyond the parameters set forth in Bounds v. Smith 430 U.S. 817 (1977)?
	3. Did the defendants fail to preserve their objections to the form of remedy?
	4. Did the dc err in requiring defendants, without opportunity, for objection to pay all expenses of the special master who designed the legal access plan?
	NOTES: *In Casey v. Lewis, 91-16513, 4 F.3d 1516 (9th Cir. 1993), this court reversed the dc's summary judgment in favor of plaintiffs on issues

DATE	PROCEEDINGS
	of contact visitation and whether HIV-positive inmates could hold food-service position. *The dc's ruling that defendants unconstitutionally denied plaintiffs meaningful access to the courts is published at 835 F. Supp. 1553 (D. Ariz. 1992). *Prior companion appeals: 93-16313, 93-15883, and 91-16683 (procedurally terminated); and 93-15039 (dismissed-lack of jurisdiction). *On 5/6/94, the U.S. Supreme Court stayed enforcement of the dc's order. wt = 7 Atty: H. Goldberg Date: 7/8/94 [93-17169] (rk) [Edit date 08/19/94]
9/17/94	CALENDARED: SAN FRAN Nov 16 1994 9:00 am Courtroom 2 [93-17169] (aw)
11/16/94	ARGUED AND SUBMITTED To Donald P. Lay, Harry PREGERSON, Diarmuid F. O'SCANNLAIN [93:17169] (dl) * * *
11/16/94	Proposed disposition circulated by HP to dpl, DFO. [93-17169] [NOTE: this is NOT public information] (fb) [Entry date 03/08/95]
11/17/94	Filed order (Donald P. Lay, Harry PREGERSON, Diarmuid F. O'SCANNLAIN): At oral argument, the parties expressed a willingness to use the services of this Court's settlement program. To enable the parties to arrive at a settlement, the Court will defer submission of this matter for thirty days. If the parties still wish to mediate their differences, they should call David Lombardi, Chief Circuit Mediator, at 744-9907, before noon on Tuesday, Nov. 22, 1994. The parties shall then meet w/the Court Mediator in S.F. beginning on Monday, Nov. 28, 1994. To facilitate settlement, Dan Pachoda, the District Court's Special Master,

DATE	PROCEEDINGS
	and Samuel Lewis, the Director of the Arizona Department of Corrections, shall attend [sic] the settlement proceedings. The parties shall remain in S.F. and work with the Court Mediator until they have arrived at a settlement or until the Court Mediator declares an impasse. If by Dec. 23, 1994, the parties have not reached an agreement, or if the Court Mediator declares an impasse, submission of this matter shall no longer be deferred. (Counsel notified by telephone) [93-17169] (dl)
11/23/94	Case resubmitted on this date to Donald P. Lay, Harry PREGERSON, Diarmuid F. O'SCANNLAIN. (See previous deferral of submission.) Order filed: 11/28/94. [93-17169] (tm) [Entry date 11/28/94] * * *
12/27/94	FILED OPINION: (Terminated on the Merits after Oral Hearing; affirmed in part, and VACATE and REMAND in part; Written, Signed, Published. Donald P. Lay; HARRY PREGERSON, author; Diarmuid F. O'SCANNLAIN.) FILED AND ENTERED JUDGMENT. [93-17169] (dl)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No: CIV 90-0054 PHX CAM

FLETCHER CASEY, JR., STEPHEN JAMES, FRANK BARTHOLOIC, ARMANDO MUNOZ, KYLE BAPTISTO, DAVID A. MANN, JEFFREY LUSTIG, TERRY DON MCFALLS, RANDY SAMPSON, JOHN TOMLIN, SCOTT TRAMPOSCH, PAMELA MCQUILLEN, CAROLYN FERGUSON, YVONNE MARTIN, DAVID TUCKER, SUSAN COLKER, JOHN MYERS, MARY JO BOOKER, RANDY THOMAS, RUTH JOHNSON, ROMAN STONE, ROBERT BANKSTON, *et al.*,
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SAMUEL A. LEWIS, Director, Arizona Department of Corrections; ROBERT GOLDSMITH, Arizona State Prison Complex, Florence; WARDEN WILLIAM RHODE, Arizona State Prison Complex, Perryville; WARDEN GEORGE HERMAN, Arizona State Prison Complex, Douglas; WARDEN ROGER CRIST, Arizona State Prison Complex, Tucson; WARDEN HAL CARDIN, Arizona State Prison Complex, Phoenix,

Defendants.

PRELIMINARY STATEMENT

1. This class action complaint, filed on behalf of all adult prisoners who are or will be incarcerated by the State of Arizona Department of Corrections, alleges that defendants are deliberately indifferent to prisoners' serious medical needs; that prisoners are assigned to and retained in segregation on the basis of uncorroborated, confidential information, including allegations of gang activity, thereby denying prisoners due process; that defendants have denied prisoners meaningful access to the courts and counsel; that defendants have failed to accommodate that special needs of handicapped prisoners; and that defendants have denied female prisoners the equal protection of the

laws. Plaintiffs allege that these acts and omissions by defendants subject prisoners to needless and serious suffering.

JURISDICTION

2. This civil action seeking declaratory and injunctive relief is brought pursuant to § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, as amended by the Civil Rights Restoration Act of 1987; and 42 U.S.C. § 1983, in that plaintiffs have been and continue to be deprived of their rights secured by the United States Constitution under the First, Sixth, Eighth and Fourteenth Amendments.

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343 (3), and 2201.

VENUE

4. Venue is proper under 28 U.S.C. § 1391 (a), in that defendants reside in the State of Arizona, and plaintiffs' claims for relief arise in the State of Arizona.

PARTIES

5. Plaintiffs are prisoners currently assigned to prison facilities in the State of Arizona.

6. Fletcher Casey, Jr. is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. He was assigned to segregation within the Special Management Unit based on uncorroborated confidential information alleging gang activity. In addition, since August 1989, he has not received recommended specialized medical attention for a chronic knee ailment.

7. Frank Bartholic is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. He waited three months to see a doctor for a painful back ailment. In addition, this functionally illiterate prisoner had no one to assist him with his initial pleadings in a lawsuit he filed, which was subsequently dismissed with prejudice.

8. Armando Munoz is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. In November 1988, he was assigned to segregation within the Special Management Unit based on uncorroborated confidential information alleging gang activity. In addition this prisoner has been waiting twelve months to see a dentist for a painful gum condition.

9. Kyle Baptisto is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. He has been subjected routinely to interference with access to the courts including interference with his receipt of legal mail.

10. Roman Stone is a blind prisoner currently assigned to the Special Management Unit in Florence, Arizona. The defendants have failed to accommodate the special needs required by his blindness.

11. Stephen James is a prisoner currently assigned to Cellblock 6 in Florence, Arizona. Due to the shortages of staff, he has been required to choose between use of the law library and eating meals. He has complained to health care providers about painful lumps on his back but they have not been evaluated by a physician.

12. Terry Don McFalls is a prisoner currently assigned to Cellblock 6 in Florence, Arizona. He suffers from folliculitis. Although prison staff know of his medical condition, he has been repeatedly forcibly shaved and not provided an alternative way of removing facial hair.

13. David Mann is a prisoner currently assigned to the East Unit in Florence, Arizona. He has been denied specialized treatment for a potentially life threatening heart ailment.

14. David Tucker is a prisoner currently assigned to the East Unit in Florence, Arizona. He has been denied medically necessary follow-up for a serious health condition.

15. Jeffrey Lustig is a prisoner currently assigned to the South Unit in Florence, Arizona. While at Central Facility in Florence, he complained to health care providers of chest pains for two months before being seen by a doctor.

16. John Myers is a prisoner currently assigned to the Central Unit in Florence, Arizona. He waited five months to see a dentist for a painful tooth with an exposed nerve.

17. John Tomlin is a prisoner currently assigned to the North Unit in Florence, Arizona. He was transferred to the North Unit from the Mohave Unit in Douglas, Arizona in December 1989. When assigned to the Mohave Unit he waited eight months to be seen by an orthopedist for a painful knee condition.

18. Pamela McQuillen is a prisoner currently assigned to the Women's Prison in Florence, Arizona. She waited five days before being taken to the hospital for treatment of a painful skin condition.

19. Carolyn Ferguson is a prisoner currently assigned to the Women's Prison in Florence, Arizona. She has been denied treatment for hypertension.

20. Yvonne Martin is a prisoner currently assigned to the Women's Prison in Florence, Arizona. She has been denied appropriate medication for a serious asthmatic condition.

21. Randy Sampson is a prisoner currently assigned to the Perryville-San Pedro Unit in Goodyear, Arizona. He has been denied sufficient library access to prepare his legal pleadings.

22. Mary Jo Booker is a prisoner currently assigned to the Perryville-Santa Maria Unit in Goodyear, Arizona. She waited four years to see a doctor for a herniated disc. While in segregation for six months, she was unable to obtain legal materials and to confer with a legal assistant.

23. Randy Thomas is a prisoner currently assigned to the Perryville-Santa Cruz Unit in Goodyear, Arizona. He waited four months to see a dentist for a toothache.

24. Robert Bankston is currently assigned to Gila Unit in Douglas, Arizona. For one month he was denied any medical attention for a stomach ulcer after coughing up blood and complaining of stomach cramps. He was refused legal materials for sixty-two (62) days while housed in disciplinary segregation.

25. Scott Tramosch is a prisoner currently assigned to the Rincon Unit in Tucson, Arizona. In order to use the satellite law library while on lockdown status, he was handcuffed to a waist chain, severely restricting his use of legal materials. He was denied direct access to the main law library.

26. Susan Colker is a prisoner currently assigned to the Arizona Center for Women in Phoenix, Arizona. She represents herself in civil actions and is unable to research the law thoroughly due to inadequate books and legal assistance.

27. Ruth Johnson is a prisoner currently assigned to the Arizona Center for Women in Phoenix, Arizona. She has serious medical needs that have gone untreated, causing her pain and general discomfort.

28. Defendants are agents, officials, or employees of the State of Arizona Department of Corrections.

29. Defendant Sam Lewis is the Director of the Arizona Department of Corrections. In the capacity of director he is responsible for the administration and application of DOC statewide policies, and is ultimately responsible for the operation of all the prison facilities, including decisions concerning staff deployment and training that directly affect plaintiffs' abilities to obtain medical care, access to the courts and counsel, and the process.

30. Warden Robert Goldsmith is responsible for the day-to-day operation of the Arizona State Prison Complex

in Florence, Arizona. In the capacity of warden he is responsible for the daily operation of this entire complex, including the Women's Prison, East Unit, Special Management Unit, Cellblock 6, and Central Unit.

31. Warden William Rhode is responsible for the day-to-day operation of the Arizona State Prison Complex-Perryville in Goodyear, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex, including the San Pedro, Santa Cruz, San Juan, and Santa Maria Units.

32. Warden George Herman is responsible for the day-to-day operation of the Arizona State Prison Complex in Douglas, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex, including the Gila Unit, Mohave Unit, Maricopa Unit, Cochise Unit, and Papago Unit.

33. Warden Roger Crist is responsible for the day-to-day operation of the Arizona State Prison Complex in Tucson, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex, including the Santa Rita, Rincon, Cimarron, Tent, and Echo Units.

34. Warden Hal Cardin is responsible for the day-to-day operation of the Arizona State Prison Complex in Phoenix, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex for women and men.

35. Defendants are sued individually and in their official capacities. At all relevant times, defendants have acted under color of State law.

CLASS ACTION ALLEGATIONS

36. This action is brought as a class action pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure.

37. Plaintiffs are representative parties of a class composed of all adult persons who are now or who in the future will be in the custody of or under the supervision of the State of Arizona Department of Corrections.

38. The class is so numerous that joinder of all members of the class is impractical. Current members of the class consist of more than 9,000 prisoners, and the prisoner population in each facility changes frequently.

39. Upon information and belief, conditions described in this complaint, are common to all prisoners within the Arizona State Prison system, the class that plaintiffs represent. The named representatives are subjected daily to the same deprivations of the class members as a whole.

40. Defendants' acts and omissions as set forth herein present questions of law common to the class members as a whole.

41. Claims made by the class representatives involve allegations of denials of constitutional rights that are generally applicable to the class as a whole.

42. Plaintiffs are members of the class and their claims are typical of all class members. Plaintiffs are represented by competent counsel who will fairly and accurately represent the interests of the class as a whole.

43. Since the class number is more than 9,000 prisoners, separate actions by individuals would in all likelihood result in inconsistent and varying decisions, which in turn would result in conflicting and incompatible standards of conduct for the defendants.

44. The defendants have acted or have refused to act on grounds generally applicable to the class, thereby making final injunctive and declaratory relief with respect to the class as a whole appropriate.

A. LACK OF MEDICAL CARE

45. Defendants do not provide immediate evaluations or diagnoses of prisoners' serious medical complaints.

Defendants misdiagnose serious medical complaints, resulting in significant and unnecessary suffering and even death. For instance, at the women's facility in Florence, a woman prisoner, complaining of serious chest pains, was initially diagnosed as having indigestion, and later died, purportedly from heart failure.

46. No physician regularly provides medical care at the women's facilities. On weekends and evenings security staff at some of these facilities are involved in the decision to have a woman's medical complaints evaluated by a health care provider.

47. Plaintiffs experience unreasonable delays in receiving medical care. For example, at the Special Management Unit (SMU), prisoners may wait from three to four weeks to be seen by a physician for a serious medical complaint.

48. Prisoners are frequently required to choose between sick call and other rights such as eating meals, law library access and exercise.

49. Sick call at some facilities is held two times per week or less. For example at Central Unit, sick call is frequently cancelled on one of the two days scheduled. Consequently, prisoners with serious medical needs are not evaluated. Sick call is held for prisoners in lockdown frequently less than once a week.

50. At the South Unit in Florence, prisoners must stand in line outdoors for sick call, regardless of the weather. The health care provider evaluates the prisoners by talking to them while they are standing in this line through a window, in the presence of other prisoners and security staff. The confidentiality attendant to health care delivery is not only seriously breached but the ability to perform an adequate health care assessment is severely compromised.

51. Physician's assistants often preempt medical care prescribed by a physician. For example, a hospital physi-

cian told a prisoner in CB6 that he had a hole in his ear, but the physician's assistant instead claimed that the hole did not exist, and refused to provide the recommended treatment.

52. The failure to have sufficient staff, both security and health care, has resulted in prisoners' treatment being delayed or terminated. For instance, at the CB6 facility, prisoners have been taken off psychotropic medication without first being seen by a psychiatrist.

53. Prisoners are given diets that do not conform to their minimum nutritional needs.

54. Plaintiffs' mental health needs are frequently ignored. Women with serious mental health needs who cannot function in the general population but do not meet the State's statutory requirements for commitment are placed in isolation cells, frequently for extended periods of time, at the Women's facilities in Perryville and Florence. A prisoner, placed in isolation at Perryville because she was considered a mental health case, constantly complained of cramps. She was refused attention by the CMA, and subsequently, she was discovered to have given birth. At the Douglas facility, prisoners are not provided any mental health services.

55. Pregnant intravenous drug users are routinely isolated at the Women's Perryville facility, and subsequently, all medical attention is seriously delayed.

56. Prisoners experience unreasonable delays in receiving dental care. For example, at the Douglas facility, a prisoner with a painful gum condition waited for five months to see a dentist.

57. At the Women's Perryville facility, prisoners have access to other prisoners' confidential medical information.

58. The allegations contained in paragraphs (45) through (57) constitute defendants' deliberate indifference to prisoners serious medical needs.

B. DISCRIMINATION AGAINST HANDICAPPED PRISONERS

59. A blind prisoner in the SMU is not provided the necessary legal assistance, compounding the access problems experienced by prisoners classified as I-5.

60. Prisoners with HIV disease are discriminated against in some facilities in the provision of programming.

61. In some facilities, handicapped prisoners are denied access to bathrooms, showers, and other essential facilities due to the absence of handrails, bars, and other mobility aids.

62. The Arizona Department of Corrections receives Federal financial assistance.

63. The allegations contained in paragraphs 59 through (62) constitute defendants' discrimination against handicapped prisoners as otherwise qualified handicapped individuals.

C. LEGAL ACCESS

64. Defendants do not provide persons trained in the law or attorneys to assist prisoners, even those who are illiterate or non-English speaking, in pursuing legal actions.

65. In most facilities, prisoners are not allowed to make legal calls unless a letter is first submitted giving permission for the telephone call from the prisoner. Prisoners therefore must frequently use monitored telephones to make legal calls. Even when privileged legal calls are allowed, they are frequently unreasonably delayed.

66. In most facilities, plaintiffs must first provide a case number before being able to talk to a prisoner legal assistant about a legal problem. Prisoners may also be asked to describe the problem for which they want legal

assistance. In some facilities, prisoners are not provided privacy for these meetings.

67. In some institutions prisoners are not allowed to copy their own legal materials. They must give these materials to prison staff to photocopy, compromising confidentiality.

68. At the South and East Units, prisoners have direct access to the law library, but are not allowed to browse the shelves. They have no starter volumes to aid them in their research, and no legal assistance. They must request a book from an untrained prisoner or staff person.

69. At CB6 defendants frequently require prisoners to choose either law library, sick call, or outdoor exercise; prisoners' legal mail is frequently opened outside the presence of prisoners; and, their confidential legal memos from prison legal assistants are routinely read by defendants' staff.

70. At the SMU prisoners classified as I-5 are denied physical access to the law library by being put into cages. These prisoners are required to have untrained officers or other prisoners classified as I-3 obtain their legal materials.

71. Prisoners in the SMU are denied contact attorney visits, unnecessarily infringing on their rights to access to the courts and counsel and confidentiality of legal materials. These prisoners are unable to review documents simultaneously with their attorneys and documents that consist of more than a few pages must be given to officers to pass between attorney and prisoner. The officers are out of view of the attorney and prisoner when delivering documents from one to the other.

72. Prisoners are harmed by the denial of meaningful access to the courts. For example, at the SMU an illiterate prisoner had his *pro se* case dismissed because defendants did not provide him with any legal assistance beyond indirect access to law books.

73. Defendants provide some facilities with only a satellite law library. The satellite law library provides insufficient legal materials. Prisoners must request basic legal materials from other law libraries. They frequently experience delays, and occasionally are unable to receive needed legal materials.

74. At the Douglas facility, prisoners who are in administrative segregation or disciplinary segregation have no direct law library access. Prisoners must know the exact full citation of a case in order to receive the law book. A prisoner may be in administrative or disciplinary segregation for as long as three months.

75. At the Tucson facility, administrative segregation prisoners are hand-cuffed to a waist chain while using the law library.

76. The allegations contained in paragraphs (64) through (75) constitute a denial of meaningful access to the courts and counsel.

D. FAILURE TO PROVIDE DUE PROCESS

77. Defendants regularly assign prisoners to and retain prisoners in segregation on the basis of uncorroborated, confidential information, including unsubstantiated claims of prisoner gang activity from other prisoners and staff. Prisoners are unable to question or confront any persons making these claims and, therefore, cannot contest a decision assigning them to segregation once it has been made.

CAUSE(S) OF ACTION

78. With respect to each and every following cause of action, allegations contained in paragraphs (1) through (77).

79. Defendants' acts and omissions at each of their facilities constitute deliberate indifference to plaintiffs' serious medical needs, violating the Eighth Amendment's prohibition against cruel and unusual punishment.

80. Defendants, by their acts and omissions, are depriving plaintiffs of their rights of access to the courts and counsel protected by the First, Sixth, and Fourteenth Amendments.

81. Defendants' arbitrary procedures for assigning prisoners to segregation violate their Due Process rights under the Fourteenth Amendment.

82. The failure of defendants to accommodate handicapped prisoners' special needs discriminates against these prisoners in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, as amended by the Civil Rights Restoration Act of 1987.

83. Defendants' acts and omissions in providing to female prisoners health care that is inferior to that provided male prisoners denies female prisoners the equal protection of the laws in violation of the Fourteenth Amendment.

VIII. PRAYER FOR RELIEF

84. Plaintiffs and the class they represent have no adequate remedy at law to redress the wrongs suffered as set forth in this complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of the defendants as alleged herein, unless plaintiffs are granted the relief they request. The need for relief is critical because the rights at issue are paramount under the Constitution of the United States.

85. WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

(a) certify the class of all adult prisoners who are now or who will be in the future under the custody of or under the supervision of the State of Arizona Department of Corrections;

(b) adjudge and declare that the acts, omissions, policies, and practices of the defendants violate the First, Sixth, Eighth, and Fourteenth Amendments, which grant constitutional protection to plaintiffs and the class that plaintiffs represent;

(c) order defendants, their agents, officials, employees, and all persons acting in concert with them under color of State law or otherwise, to provide needed health care for plaintiffs; to provide meaningful access to the courts; to accommodate the special needs of handicapped prisoners; to cease assigning prisoners to segregation based on uncorroborated, confidential information; and to cease denying female prisoners the equal protection of the laws;

(d) enjoin defendants, their agents, officials, employees, and all persons acting in concert with them under color of State law or otherwise, from continuing the unconstitutional acts, conditions, and practices described in this Complaint, and from failing to provide in the future constitutionally adequate medical care, access to the courts and counsel, accommodations for the special needs of handicapped prisoners, due process in segregation assignments, and equal protection of the laws for female prisoners;

(e) retain jurisdiction in this case until the unlawful and unconstitutional conditions and practices as alleged herein no longer exist and the Court is satisfied that they will no longer occur;

(f) grant plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and,

(g) grant any other relief that the Court deems just and proper.

Respectfully submitted,

/s/ Adjoa A. Aiyetoro
ADJOA A. AIYETORO
STUART H. ADAMS, JR.
DAVID C. FATHI
ACLU NATIONAL PRISON PROJECT
1875 Connecticut Ave., N.W.
Suite 410
Washington, DC 20009
(202) 234-4830

/s/ Alice L. Bendheim
ALICE L. BENDHEIM, P.C.
Arizona Bar #3376
1542 West McDowell Road
Phoenix, AZ 85007
(602) 253-2954

Dated: March 25, 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Title Omitted in Printing)

STIPULATION

The parties' attorneys toured Alhambra, ACW and the Arizona State Prison Complexes in Florence, Tucson, Douglas, Perryville and Winslow the week of August 19, 1991. As a result of this tour¹ they stipulate to the following facts.

I. ACCESS TO THE COURTS

A. Law Library Schedule, Inventories and Capacities.

All the law libraries toured contained the "Muecke list", although some of the law library inventories were not current. Any specific problems in the inventories are outlined below by facility. Most of the law libraries had a copy of the *Prisoners' Self-Help Litigation Manual* and the Warden in Winslow agreed to purchase it. Many of the law libraries had legal volumes in addition to those required by the Muecke list. Most of the law libraries contained an inventory list, but this list was not posted in all law libraries.

1. ASPC—Florence, Cellblock Six (CB-6).

a. On August 20, 1991, CB-6 housed approximately 180 prisoners.

¹ Attorneys for Defendants advised Plaintiffs' counsel that Defendants were no longer intending to use the socialization chair at the Special Program Unit. That stipulation is included at the end of this document.

b. The law library is open Monday through Sunday from 7:00 a.m. to 10:00 p.m. The law library may close prior to 10:00 p.m. if the list of prisoners requesting use of the facilities is exhausted.

c. On or about July 20, 1991, the seating capacity in the law library was changed from one to four prisoners by the construction of cages within the law library area.

d. Prisoners cannot browse the shelves. A prisoner law clerk hands prisoners the requested legal materials.

e. There are four to six two-hour call-outs per day. A prisoner may be able to stay longer than two hours if he requests additional time. Prisoners with court deadlines are given priority.

f. The weekly bulletin containing the list of approved legal assistants is posted on the law library bulletin board.

g. The Muecke list was current on August 20, 1991, with the exception of missing pocket parts from some *Corpus Juris Secundum* volumes as noted by Plaintiffs' counsel. Counsel for Defendants did not note these missing pocket parts.

h. The law library contains legal books exceeding the Muecke list, including the following volumes: *How To Use Shepards*; *How To Find The Law*; *Prisoners Self-Help Litigation Manual*, 1983 edition but not the 1990 update; and *Post Conviction* manuals, current edition.

2. ASPC—Florence, Special Management Unit (SMU).

a. There were approximately 90 I-3 prisoners housed in SMU and 822 I-5's on August 20, 1991.

b. I-3's are allowed to use the law library from 6:00 p.m. to 8:00 p.m., Tuesday through Saturday. I-5's are allowed to use the law library from 7:00 a.m.-3:00 p.m., Monday; 7:00 a.m.-9:00 p.m., Tuesday-Friday; and, 1:00 p.m. to 9:00 p.m., Saturday.

c. A prisoner may use the law library for three hours per call-out. If he has a court deadline, he is given as much time as possible.

d. There is a three to four day wait after a request to use the law library is made. Preference is given to prisoners with a court deadline. When the list of prisoners requesting library time is exhausted, the library staff calls for prisoners off the next day's schedule.

e. Prisoners do not have direct access to the shelves. I-5 prisoners sit in individual locked cages adjacent to the law library and receive legal materials from either the prisoner law clerk or the officer assigned to the law library. I-3 prisoners sit in the general seating area at tables and request materials from the prisoner or civilian library staff.

f. The law library inventory contains legal books exceeding the Muecke list, including the following volumes: *How To Use Shepards*; *How To Find The Law*; *Prisoners' Self-Help Litigation Manual*, 1983 edition; and *Post Conviction* manuals, current edition.

3. ASPC—Florence, Women's Division.

a. The Women's Division is a medium security institution.

b. The law library is open Monday and Friday from 8:00 a.m. to 3:30 p.m.; Tuesday and Wednesday from 10:00 a.m. to 6:00 p.m.; and, Thursday from 8:00 a.m. to 3:00 p.m. The law clerks are attempting to get permission to change the hours to 8-3, 5-7:30, Monday through Friday. Access is occasionally permitted beyond the posted hours.

c. There are 190 women incarcerated in this unit. The seating capacity of the law library is approximately 24-25. Between 5 and 10 women use the facility daily.

d. Prisoners have direct access to shelves. Arrangements can be made for lockdown prisoners to have physi-

cal access to the law library, however, material is also taken to prisoners in lockdown by the law clerk/legal assistant.

e. The law library complies with the Muecke list and contains legal books exceeding that list, including the following volumes: *Nutshells on Legal Research*; *ACLU Rights of Prisoners*, and *Prisoners' Self-Help Litigation Manual*, 1983 edition.

f. A list of legal assistants is available in the law library.

4. ASPC—Florence, East Unit.

a. East Unit is a medium security institution.

b. The law library is operational Monday through Friday from 10:00 a.m. to 6:00 p.m. The law library is closed from 3:00 p.m. to 4:00 p.m. for count.

c. There are 430 prisoners in this unit. The seating capacity of the law library is 16. Approximately six prisoners use the law library per hour.

d. Prisoners have direct access to the shelves for some reference books.

e. Lockdown prisoners do not have direct physical access to the law library. They must request legal materials through a paging system.

f. An inventory list is present in the law library.

g. A list of approved legal assistants is present in the law library.

h. The library inventory contains legal books exceeding the Muecke list including, but not limited to, the following volumes: the 1983 edition of *Prisoner's Self-Help Litigation Manual* and *Self-Help Guide to Rule 32*, written by a law clerk.

5. ASPC—Florence, North Unit.

a. North Unit is a level 2, minimum security facility.

b. The law library is open Monday and Friday from 8:00 a.m. to 3:30 p.m. and Tuesday through Thursday from 10:30 a.m. to 6:30 p.m. There are no weekend hours. Most prisoners work so more people use the law library during the evening hours.

c. There are 391 prisoners assigned to this unit. The seating capacity of the law library is 16-18. Approximately eight prisoners use the law library each day.

d. Prisoners must request some legal materials from a law clerk.

e. Prisoners on "house arrest" have physical access to the law library upon request to the Captain.

f. The law book inventory list is present in the law library, but is not posted.

g. A list of approved legal assistants is not posted in the law library. The Correctional Security Officer in the library maintains the list.

h. The law library satisfies the Muecke list and contains the following additional volumes: *How To Use The Law Library*, by Ruse; *Prisoners' Self-Help Litigation Manual*, 1983 edition; *Prisoners' Self-Help Post Conviction Manual*, 1988 edition.

6. ASPC—Florence, South Unit.

a. The South Unit is a level 3, medium security institution.

b. The law library is open Tuesday through Saturday from 7:00 a.m. to 3:00 p.m., and is crowded on Saturdays.

c. There are 409 prisoners in this unit. The law library seating capacity is eight to twelve. Approximately

four to five prisoners use the law library daily. Approximately once every two weeks there are too many prisoners for the law library and these extra prisoners are seated in the lending library.

d. Prisoners do not have direct access to the shelves in the law library. Instead, prisoners must request needed material from a law clerk or ADC security officer.

e. Prisoners who are housed in the Special Program Unit (SPU) are scheduled for access to the law library on Wednesdays and Fridays from 12:00 noon to 2:30 p.m. They may get permission to come on other days or remain in the law library for a longer period of time.

f. A law library inventory list is present, but not posted in the law library.

g. There is no list of approved legal assistants posted in the law library. The officer assigned to the law library maintains the list and will make it available to prisoners upon request.

h. The law library inventory complies with the Muecke list. The law library does not contain the *Prisoner's Self-Help Litigation Manual* or *Post Conviction Manual*.

7. Alhambra.

a. Alhambra is a reception and diagnostic facility and a mental health facility which houses approximately 372 prisoners. It is classified as a maximum security facility. Prisoners in the reception and diagnostic component stay approximately two weeks.

b. The seating capacity of the law library is eight.

c. Prisoners do not have direct access to the shelves. Instead, they must request material through a law clerk.

d. The law library is open from 7:30 a.m. to 8:30 p.m., Monday through Friday and 8:00 a.m. to 10:00 p.m., Saturday and Sunday. Prisoners are scheduled by

unit and get between 7½ hours and 10 hours in the law library per week.

e. The law book inventory list was not present in the law library on the day of the tour. According to Warden Upchurch, placing the law book inventory list in the law library would not present a problem.

f. The law library inventory satisfies the Muecke list, however, some of the law library volumes were not complete. There was no *Shepard's U.S. Citations* 1991 supplement and the *Federal Reporter*, second edition went only to Volume 935.

g. The law library contains volumes exceeding the Muecke list, including *How To Do Legal Research; A Simplified System of Citation*, and *Jailhouse Lawyer's Manual*.

8. ASPC—Douglas: Mohave Unit and Gila Unit.

a. Mohave is a level 3, medium security facility, with 872 prisoners. Gila is a level 2, minimum security facility with 632 prisoners. Since March or April 1991, the law libraries have been operational Monday through Friday from [12:00 Gila] 1:00 p.m. to 3:30 p.m. and 5:00 p.m. to 9:00 p.m.; Saturday and Sunday from 8:00 a.m. to 10:30 a.m. and 12:30 p.m. to 3:30 p.m. Prior to March 1991, the law library hours were 6:00 p.m. to 9:00 p.m. [8:00 Gila] Monday through Friday. The Mohave law library is also used by prisoners at the Papago DWI facility. The staff at Douglas obtained approval for the new hours as an exception to the March 15, 1991, ADC policy based on their assessment of law library usage.

b. On weekends, photocopying and notary services are not available.

c. The seating capacity of the Mohave law library is approximately 28. Approximately 15 prisoners use this law library per day. The seating capacity for the Gila

law library is 24 and approximately 9 prisoners use this law library daily.

d. Lockdown prisoners are not allowed physical access to the law library. They must use a paging system for requesting legal materials.

e. General population prisoners have direct access to shelves.

f. An inventory list is placed on the bulletin board in the law library.

g. Legal assistance forms are in the policy books in the law library. The law clerks copy them for prisoners upon request.

h. A two-hour tape by West Publishing Company, purchased in 1991, on how to use the law library books is available in the law libraries. It has been shown on the prison television channel at least twice in 1991.

i. The law libraries satisfy the Muecke list. The inventories contain volumes exceeding the Muecke list and include the *Prisoners' Self-Help Litigation Manual*, 1983 edition.

9. ASPC—Winslow, Kaibab Unit.

a. Kaibab is a medium security facility.

b. The law library is open Monday through Friday from 7:00 a.m. to 9:00 p.m. This schedule was approved as an exception to ADC policy based on a study of prisoner usage.

c. There are 716 prisoners assigned to this unit. There are two law library call-outs per day.

d. A prisoner usually receives at least ten hours per week in the law library. If a prisoner has a court date an attempt is made to give him as many hours as needed. A prisoner may wait as long as three days to get into the law library.

e. Prisoners do not have direct access to the shelves.

f. Lockdown prisoners do not have physical access to the law library. They may request materials through a paging system or request legal assistance in writing.

g. The law library contains a two-hour tape on legal research entitled *Legal Research Made Easy*, by Nolo Press. The tape comes with a guide which was missing from the law library. Law clerks and legal assistants are not required to review the tape.

h. The law library inventory list is posted in the law library and is posted in the lockdown unit and in the living areas.

i. The law library contains volumes exceeding the Muecke list including the *Prisoners' Self-Help Litigation Manual*, 1983 ed. and 1990 update.

10. ASPC—Winslow, Coronado Unit.

a. Coronado is a minimum security facility.

b. The law library is open Monday, Tuesday, Wednesday, and Friday from 1:00 p.m. to 4:00 p.m. and 4:30 p.m. to 9:00 p.m.; Thursday from 1:00 p.m. to 3:30 p.m. and 6:30 p.m. to 9:00 p.m.; and, Saturday from 9:00 a.m. to 11:00 a.m.

c. There are 600 prisoners assigned to this facility. Prisoners can attend the law library any time during the hours of operation. According to staff's usage study, an average of nine prisoners used the law library per day on weekdays, and two prisoners per Saturday.

d. The seating capacity of the law library is approximately 30.

e. Prisoners, including legal assistants, do not have direct access to the shelves. They must request materials from the law clerk.

f. The inventory list of approved legal assistants is not posted in the law library.

g. The law library inventory satisfies and exceeds the Muecke list. The warden indicated his intention to order *Prisoners' Self-Help Litigation Manual*. The Warden also agreed to purchase the *Post Conviction Manual* and *Legal Research in a Nutshell* if these volumes were not already available.

11. *ASPC—Perryville, San Juan Unit.*

a. San Juan is a medium security facility.

b. The law library is open from 1:00 p.m. to 9:00 p.m. Monday through Thursday and 8:00 a.m. to 4:00 p.m., Friday. The Captain indicated that he will open the law library on weekends if the prisoner has a court deadline.

c. Lockdown prisoners may make a written request to come to the law library. Only one prisoner can come at a time.

d. There are 744 prisoners in this unit. The law library seating capacity is 18. The officer allows 12 prisoners and three law clerks to be in the law library.

e. Prisoners do not have direct access to the shelves.

f. The law library inventory list is present but not posted in the law library.

g. There is no list posted of approved legal assistants in the law library.

h. The legal assistance forms are not in the law library.

i. The librarian is ordering *Black's Law Dictionary* and making arrangements to place copies of the *Appellate Handbook* in each law library.

j. The law library contains volumes exceeding the Muecke list including the 1983 edition of *Prisoners' Self-Help Litigation Manual*.

12. *ASPC—Perryville, Santa Cruz Unit.*

a. The law library is operational Monday through Thursday 1:00 p.m. to 9:00 p.m. and Friday from 8:00 a.m. to 4:00 p.m. The law library is open on weekends in the afternoon if prisoners write and indicate a need to work. There is no direct access to the shelves.

b. There are 744 prisoners assigned to this unit. The seating capacity is twelve. Prisoners need a pass to go to the law library, but can come and go whenever the law library is open.

c. Lockdown prisoners do not have physical access to the law library. Lockdown prisoners receive their legal materials through a paging system. When a lockdown prisoner is unsure of the materials he needs, the index of the digest is sent to him.

d. The law book inventory list is present in the law library.

e. The list of approved legal assistants is on file in the law library, but not posted.

f. The law library does not keep legal assistance forms.

g. The law library does not have volumes 32-38 of the *Modern Federal Practice Digest* which is on the Muecke list.

h. The law library contains legal books not on the Muecke list including the 1983 edition of *Prisoners' Self-Help Litigation Manual* and the current edition of *Self-Help Post Conviction Manual*.

13. *ASPC—Perryville, Santa Maria Unit.*

a. Santa Maria is a maximum security facility. There are 302 women prisoners housed in this unit.

b. The law library is open from 8:00 a.m. to 8:00 p.m., Monday through Friday. The day is divided into

four, two and one-half hour sessions. Prisoners get a maximum of ten hours per week in the law library unless they have a court deadline.

c. The law library is periodically closed because of staff shortages. Attempts are made to make up lost hours of operation.

d. Prisoners who are in investigative lockdown cannot go to the law library. These prisoners request legal materials through a paging system.

e. Prisoners do not have direct access to shelves.

f. A law look inventory list is present but not posted in the law library.

g. The law library does not have the *Modern Federal Practice Digest* which is on the Muecke list.

h. The law library inventory contains legal volumes not on the Muecke list.

14. *ASPC—Perryville, San Pedro.*

a. Four hundred thirty-two prisoners were assigned in this unit on the date toured.

b. The law library is open Monday through Friday from 7:00 a.m. to 11:00 a.m., 2:00 p.m. to 4:00 p.m. and 6:00 p.m. to 8:00 p.m. If an officer is available and there is no problem with visitation, the law library is open the same hours on Saturday and Sunday.

c. The seating capacity of the law library is fifteen.

d. Photocopies take one to two days.

e. Prisoners in lockdown do not have physical access to the law library. They must request legal materials through a paging system.

f. A law library inventory list is posted in the law library.

g. The law library does not have a complete set of Arizona legal forms. The librarian has this legal material on order.

h. The law library inventory satisfies the Muecke list. The law library also contains legal volumes not on the Muecke list including *Prisoners' Self-Help Litigation Manual* and the 1988 edition of *Post Conviction Manual*.

15. *Arizona Center for Women (ACW)—Phoenix.*

a. ACW houses minimum security prisoners. The population was approximately 350 on the day toured. The seating capacity of the law library is 20. Between 4 and 10 prisoners use the law library per day.

b. Prisoners have direct access to books. There have been no problems with missing books or torn pages.

c. Prisoners in lockdown are allowed physical access to the law library upon request.

d. The law library is open from 1:00 p.m. to 9:00 p.m., Monday through Friday.

e. The Muecke list is posted in the law library, but not the entire law library inventory.

f. Pocket parts in several volumes of *Federal Practice Digest*, third edition, are not current. The pocket part for *Arizona Law of Evidence (UDALL)* is not current. The staff indicated they have ordered the missing pocketparts.

g. The law library inventory includes legal volumes in addition to those on the Muecke list.

B. *Legal Assistants And Law Library Staff.*

Most law libraries were staffed by a security staff member and varying numbers of prisoner law clerks. Law libraries at SMU, Perryville, Tucson, Winslow and Doug-

las were also staffed by a civilian librarian. There is no ADC training program for inmate clerks. Some of the prisoner law clerks have taken a correspondence paralegal course on their own initiative. There is no requirement that they have any legal training, although at Perryville and Tucson the librarians require law clerks to pass a test.

All the facilities utilized legal assistants who provided legal help to prisoners who needed or requested it. Legal assistants were also utilized in most facilities to service prisoners in lockdown.

1. *ASPC—Florence, CB-6.*

a. As of August 20, 1991, CB-6 had four approved prisoner law clerks, of whom one spoke Spanish as well as English.

b. One security officer and one prisoner law clerk are present in the law library when it is operational.

c. The approved list of legal assistants is placed in the weekly bulletin. On August 2, 1991, there were three approved legal assistants.

d. Legal assistance forms are not present in the law library.

e. A prisoner law clerk conducted a training program in legal research for approximately three months. This program was discontinued in 1990.

2. *ASPC—Florence, SMU.*

a. The SMU has three law clerks.

b. One Correctional Security Officer, at least one law clerk and a librarian are present during the hours of operation.

c. The approved list of legal assistants is placed in the weekly bulletin. There were eleven approved legal assistants on the list as of April 20, 1991.

d. Legal assistance forms are not present in the law library.

3. *ASPC—Florence, Women's Division.*

a. There is no civilian staff person assigned to the law library.

b. There are two approved prisoner law clerks who staff the law library. There is always at least one law clerk in the law library when it is open.

c. The two approved law clerks are also approved legal assistants. Neither speak Spanish. There are a number of Spanish-speaking prisoners. The law clerks either use a Spanish/English dictionary or attempt to find someone on the yard to interpret.

d. There are three additional legal assistants who only handle disciplinarys.

4. *ASPC—Florence, East Unit.*

a. The law library is staffed by a Correctional Security Officer and two law clerks. There are three law clerk positions.

b. There are seven approved legal assistants.

c. One legal assistant speaks some Spanish.

5. *ASPC—Florence, North Unit.*

a. A Correctional Security Officer and two law clerks staff the law library. The prisoner who does the photocopying is Latino and speaks Spanish fluently.

b. There was one approved legal assistant at the time of the tour.

6. *ASPC—Florence, South Unit.*

a. The law library staff includes a Correctional Security Officer and three prisoner law clerks, one of whom speaks Spanish.

b. The Spanish-speaking law clerk also is an approved legal assistant. There are nine approved legal assistants.

7. *Alhambra.*

a. The law library is staffed by two approved prisoner law clerks. They also serve as the approved legal assistants.

b. The law library has neither a civilian librarian or civilian librarian assistant.

c. Legal assistance request forms are not present in the law library.

d. The prisoner law clerk photocopies legal materials.

e. All Correctional Program Officers are notaries.

8. *ASPC—Douglas Mohave Unit.*

a. The law library has three prisoner law clerks. One of the law clerks speaks Spanish. There is also a civilian librarian.

b. The facility also has approved legal assistants. The law clerks receive requests from prisoners in lockdown for material but cannot take the material to the prisoner. Only a legal assistant can take lockdown prisoners the requested material.

9. *ASPC—Winslow, Kaibab Unit.*

a. There are three law clerks, one of whom is bilingual, and a civilian librarian who staff the law library.

b. There are five legal assistants, but only two are approved to deliver legal materials to the lockdown unit. None of the legal assistants are bilingual.

c. Prisoner disciplinary representatives began receiving training in handling disciplinary cases in 1991. Two training sessions, similar to that given ADC staff, had been held by the date of the tour.

d. The procedures of disciplinary court are available to prisoners in English and Spanish.

10. *ASPC—Winslow, Coronado Unit.*

a. There are two approved law clerks and a civilian librarian staff for the law library. One law clerk is Spanish speaking. A circulation clerk in the general library speaks Navajo.

b. There are four legal assistants, one of whom may speak some Spanish.

11. *ASPC—Perryville, San Juan Unit.*

a. There are three law clerks, a Correctional Security Officer and a librarian assigned to the law library. This librarian is supervised by a person responsible for the general and law libraries. The librarian oversees the four law libraries at ASPC-Perryville. Two of the law clerks are Spanish speaking.

b. There are two law clerks assigned to assist prisoners who are in protective segregation. Neither of these law clerks speaks Spanish.

12. *ASPC—Perryville, Santa Cruz Unit.*

a. The law library staff includes a Correctional Security Officer, two law clerks and one bilingual aide in training.

b. The bilingual aide does not work on weekends.

13. *ASPC—Santa Maria Unit.*

a. The law library is staffed by three prisoner law clerks and a Correctional Security Officer. The law clerk who speaks Spanish was leaving the facility. One of the officers assigned to the law library speaks Spanish.

b. There is one approved legal assistant for general population prisoners and one for those in lockdown. Neither one of these legal assistants speaks Spanish.

14. *ASPC—Perryville, San Pedro.*

a. The law library is staffed with three law clerks and a Correctional Security Office. None of the law clerks speaks Spanish.

b. There are two approved legal assistants for this unit. The approved list is posted on the bulletin board in the yard.

15. *Arizona Center for Women (ACW)—Phoenix.*

a. The law library is staffed by two law clerks. An ADC employee who teaches at ACW also supervises the law library.

b. There were two approved legal assistants for disciplinary actions on August 19, 1991.

II. HANDICAP ACCESS.

The ADC has determined that only some facilities will be made accessible to prisoners with mobility impairment physical handicaps. These facilities are the Rincon Unit in ASPC—Tucson, and ASPC—Florence. ADC indicates it will not deny programming to prisoners based on a physical handicap, with the exception of its policy of denying HIV-positive prisoners job assignments in food service—the legality of which they plan to challenge on appeal. Plaintiffs and Defendants further stipulate that continued retrofitting of facilities for handicap access will be accomplished by retaining a consultant in architectural design from an independent organization with experience and expertise in handicap accessibility such as the Easter Seals Foundation. The following are the observations made during the tours the week of August 19, 1991 concerning aids to physically challenged prisoners.

A. *ASPC—Florence.*

1. *CB-6.*

a. The Health Unit is handicap accessible.

b. Showers and bathrooms are not handicap accessible. If a prisoner cannot use stairs, he can be housed in the observation cells.

c. The law library is handicap accessible.

2. *SMU.*

a. The Health Unit is handicap accessible.

b. The cells do not contain accommodations for the handicapped.

c. Handicapped prisoners who need baths are escorted to the health unit for their baths.

d. The law library is handicap accessible.

3. *Women's Division.*

a. The law library and program areas are handicap accessible.

b. One living unit is being renovated to be handicap accessible. The renovations are being made in accordance with recommendations from the Central Arizona Health Institute.

c. There was one woman in the facility who ambulated with a walker.

4. *East Unit.*

a. As of August 20, 1991, there were no wheelchair-bound prisoners in the facility.

b. The dining hall, law library, visitation area and hobby shop were made handicap accessible in 1990.

c. The Health Unit is handicap accessible.

d. Easy Cluster is utilized for wheelchair bound prisoners. The shower in Easy Cluster has a chair with

wheels, and a handrail. There is no anti-slip flooring. There is also a handrail in the bathroom.

- e. The lockdown unit is not handicap accessible.

5. North Unit.

- a. The Law Library is handicap accessible.
- b. There are some prisoners with prosthesis in this unit.

6. Rynning Unit.

This unit is not handicap accessible. Staff indicate handicapped prisoners are transferred to Central Unit.

7. South Unit.

- a. There were nine wheelchair-bound prisoners in this unit at the time of the tour.
- b. All living and program areas are on the ground floor and accessible to handicapped prisoners.
- c. A chair is placed in the shower. Prisoners must pull themselves up on a wall and lift themselves over a ledge to get into the shower and onto the chair.
- d. As of August 19, 1991, there were no handicap structures in the South Unit such as handrails, antislip flooring in the shower and bathroom areas and ramps. Plans exist, however, to make modifications to accommodate the physically handicapped.

8. Central Unit.

- a. In approximately February 1991, a plan was developed for handicapped access in Central Unit. This plan was to make modifications to Housing Unit 8.
- b. The modifications to Housing Unit 8 were scheduled to be completed in July 1991, however, there has been a six month delay.

- c. There are approximately 25-30 wheelchair-bound prisoners in the entire ASPC-Florence.

B. Alhambra.

1. ADOC staff consulted with the Easter Seals Foundation to determine how to accommodate physically handicapped prisoners.
2. The health unit is handicap accessible.
3. Showers are equipped with rails and a rubber tip chair. These improvements were made August 12, 1991.
4. Risers for toilet seats are on order.
5. The flooring for the bathrooms and showers is small tiles, but not anti-slip flooring.
6. Upper floors of Baker Ward and Flamenco are not handicap accessible.
7. One room for two prisoners in Baker Ward is equipped for the handicapped. The shower is handicap accessible and a riser for the toilet is on order. Two rooms in the reception unit are equipped for the handicapped.
8. The law library and occupational therapy area are handicap accessible.

C. ASPC—Douglas.

1. All shower floors are currently being provided anti-slip material (Rockite).
2. There are no handrails in the showers or toilet areas.
3. There are on occasion crutch-bound prisoners and prisoners with prosthesis at the facility.
4. The law libraries are handicap accessible.
5. Except for the administration building, all building are single level structures.

D. *ASPC—Winslow: Kaibab and Coronado.*

1. Prisoners with physical handicaps are not accepted to ASPC—Winslow.
2. All visiting and public areas are handicap accessible.
3. In general, the facility is not handicap accessible.
4. In September 1990, non-slip floors were put down inside and outside of the showers in the lockdown unit. When the prison was constructed in summer 1990, handrails in the showers and non-slip floors in the shower areas of the general population units.
5. The law libraries are handicap accessible.

E. *ASPC—Tucson.*

1. *Rincon—Unit.*

- a. Wheelchair-bound, crutch-bound and partially blind prisoners have been placed in Rincon.
- b. The bathrooms in the Rincon Unit have had anti-slip floors since 1981. There are no rails in the bathrooms and showers.
- c. All program units and living areas are on the ground floor and accessible to handicapped prisoners.

2. *Echo Unit.*

- a. This unit was not intended for handicap access.
- b. There is a ramp to the control unit and to the commissary. These ramps were constructed approximately two years ago.
- c. The shower in Dorm 3 was modified by putting anti-slip flooring and adding a handrail. A chair is available for handicap showering. These changes were made approximately three years ago due to the presence of a handicapped prisoner.

d. There are plans to modify Dorm 1 as Dorm 3 since there is a prisoner with a prosthesis assigned to Dorm 3. At the time of tour, the prisoner had to go from Dorm 1 to Dorm 3 to shower.

e. Prisoners are assigned to a housing unit before the unit staff know of any special needs. Once these needs are learned, the staff attempts to accommodate the handicapped prisoner.

3. *Santa Rita.*

- a. One housing unit has a ramp to the cells and handrails in the shower. There was no anti-slip flooring in the shower. There was a wood platform in the shower. These accommodations to have existed approximately five years.
- b. None of the cells had specialized toilets.

4. *Cimarron Unit.*

- a. The dining area, barbershop, commissary, disciplinary hearing room and school are all on the first floor and accessible to handicapped prisoners.
- b. The cellblock is two tiered and there is no ramp to the second tier.
- c. ADC staff have purchased anti-slip strips for the shower area. There are no handrails in the showers or for the toilets.
- d. The unit has had prisoners with prosthetics, however, staff indicate they will be transferred to Rincon Unit if they experience difficulties.

F. *ASPC—Perryville.*

1. There is no handicap access at the law libraries.
2. The health unit is on the ground level and is accessible. Wheelchair-bound prisoners are transferred out of the facility, however, there are prisoners who have

prosthesis and are physically challenged. Some of these prisoners are transported by electric cart and assisted into and out of the libraries.

3. Showers and bathrooms are not handicap accessible. ADC is committed to making 1 Pod handicap accessible and to assign prisoners there when appropriate. The women prisoners are a bigger problem than the men because they are a higher classification than allowed in ASPC—Florence Women's Unit.

4. The facility is looking at the possibility of installing handrails in showers and bathrooms and anti-slip flooring.

G. *Arizona Center for Women (ACW).*

1. The health unit and program areas, including the law library, are accessible to the handicapped.

2. There is one room with two double bunks that has been retrofitted with a handrail in the shower, toilet with handrail and anti-slip strips in shower. The floor around the shower was not anti-slip flooring.

III. CONFIDENTIAL INFORMATION.

In approximately January 1991 and April 1991, the facilities were provided with new policies on the use of confidential information in classification and disciplinary cases, respectively. A classification seminar was held in the spring or early summer 1991 to train staff in use of the forms attached to the policies. The policies require establishing the reliability of the informant and attempting to corroborate the information prior to taking any actions. Defendants agree that these policies will continue to remain in effect at all Arizona State Prison Complexes. In some of the facilities, security staff indicated they never relied upon confidential information for classification or disciplinary decisions, but if they ever had occasion to do so they would follow the 1991 policies. Other facilities indicated that they do not use confidential

information in the absence of corroborating physical proof. Some units using confidential information indicated that inmates are only locked down on confidential information where another inmate is at risk or where the security of the institution is threatened. The Central Office staff monitors the use of confidential information on those cases that are appealed to them. Only a small percentage of cases are appealed. Specific differences from this policy/procedure are noted below.

A. *ASPC—Florence.*

1. *SMU.*

This unit uses a form called the Contemporaneous Record Form, which is similar to the department's form contained in the 1991 procedure. The Contemporaneous Record Form was introduced in July 1991.

2. *East Unit.*

The unit used a narrative format for disciplinary reports that was supposed to contain information on the confidential informant. After the 1991 seminar, they began using the form for classification and disciplinary.

3. *North Unit.*

a. A form is not used to determine the reliability of confidential information when used in disciplinary cases. ADC staff was to have included similar information in their incident reports.

b. The reliability and credibility of information is based on the available physical evidence and what is said on the yard.

c. There have been six cases in the eight months prior to the tour relying on confidential information. Four of these cases were related to one assault.

d. Unit Staff will not take action solely on the basis of confidential information; corroborating physical evidence is required.

e. The Deputy Warden stated he would have no problem requiring his staff to complete the Department's confidential information forms.

4. *CB-6.*

The CB-6 staff indicated they did not utilize confidential information.

5. *Women's Unit.*

The Women's Unit staff indicated they did not utilize confidential information.

B. *ASPC—Winslow: Kaibab Unit.*

1. The staff at Kaibab Unit are provided training twice a year in use of confidential information.

2. Security staff have used the reliability forms since January 1991 or December 1990.

3. Security staff will not use confidential information in the absence of corroborating physical evidence.

C. *ASPC—Perryville.*

1. The facility started using the department form in April 1991. Prisoners are placed in lockdown immediately based on confidential information pending verification of the confidential information if the situation is life threatening or a major breach of security.

2. The form is filled out if the prisoner is facing a disciplinary or classification procedure in which confidential information will be used, even when physical evidence is found.

3. The credibility check on confidential information may take 30 days, but this is rare. When a prisoner is

locked down because the incident is life threatening or caused a major security breach, the credibility check takes approximately 11 days.

IV. SPECIAL PROGRAM UNIT.

The Defendants agree to no longer utilize the socialization chair that was located in this unit. The Defendants have removed that chair from the unit.

RESPECTFULLY SUBMITTED this 15th day of November 1991.

JONES, SKELTON AND HOCHULI

ACLU NATIONAL PRISON
PROJECT

By /s/ Laurence G. Christopher
EDWARD G. HOCHULI
KATHLEEN L. WIENEKE
LAURENCE G. CHRISTOPHER
2901 North Central Ave.
Suite 800
Phoenix, Arizona 85012
Attorneys for Defendants

By /s/ Adjoa A. Aiyetoro
ADJOA A. AIYETORO
STUART H. ADAMS, JR.
DAVID C. FATHI
1875 Conn. Ave., N.W.
Washington, D.C. 20009
Attorneys for Plaintiffs
ALICE L. BENDHEIM
1542 West McDowell Rd.
Phoenix, Arizona 85007
Co-Counsel for Plaintiffs

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

(Title Omitted in Printing)

REPORTER'S TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE CARL A. MUECKE
UNITED STATES DISTRICT JUDGE
NOVEMBER 22, 1991

* * * *

[114]

DIRECT EXAMINATION
(Resumed)

BY MR. ADAMS:

Q: Mr. Wilbur, what use of law libraries do prisoners at the Arizona Department of Corrections have?

A: Generally most prisoners are unable to use the law library.

Q: Why is that?

A: There are a number of reasons. First of all, it goes without saying that most prisoners have not been trained in how to use law libraries. But even if they did have training, most of them do not, in my experience and from what I found in my tours and talking to people, just don't have either the intellectual ability. Sometimes they don't have the literacy levels that would be required to read law books and conduct legal research; some for reasons of English not [115] being their first language or not being a language that they understand at all. The law books are of no use to them.

And also in some of the institutions the prisoners, even if they don't have the problems I have just mentioned, are not actually allowed to see the books or get to the books themselves, and have to borrow them. Even if

they're in the law library they don't actually have direct access to the shelves in some situations. So there are a number of reasons why I found that to be true.

Q: Do you have an opinion on this level of use as it impacts on a prisoner's ability to access the courts?

MR. STRUCK: Objection, Your Honor, again I—

THE COURT: He's not testifying on constitutional access. He's talking about whether, in his opinion, based on his experience of knowing about what you do and prisons, and he's established as an expert. He can say a simple thing like whether or not you have access to the court. Whether that amounts to constitutional dimensions is another matter.

MR. STRUCK: Okay. May I make—

THE COURT: That's why I read that thing about the opinion. He's allowed to give opinions, for heaven sakes.

MR. STRUCK: Your Honor—

THE COURT: You can make any kind of a record you want. Go ahead.

* * * *

[122] BY MR. ADAMS:

Q: Mr. Wilbur, we're focusing on the ability of a prisoner to use the law library. Are there other categories of prisoners whose use of the law library is a problem in your—from your observation?

A: Okay. Well, in addition to the lawyers that are allowed to go to the library and who, as I've said, really don't have the ability to do that, to use it in any effective means or manner, there are a number of prisoners who are locked down and have no ability to actually get to the library in the first instance, and instead are forced to rely on what's often called a paging system of book borrowing.

Q: The parties have already stipulated to the fact that the persons who are in lockdown and that there is what is called a book borrowing system. Can you explain how the paging system or the book borrowing system works?

A: The details are somewhat different from one institution to another, but in general someone who does not have the physical ability to go to the law library requests in writing, by sending what's often called a kite or a written [123] request to the law library to borrow books.

THE COURT: By physical ability, you mean he is—the physical part of it is he's restricted by the prison itself, by the authorities there?

THE WITNESS: Yes, Your Honor, that's what I mean.

THE COURT: You don't mean handicapped?

THE WITNESS: No, I mean locked down.

THE COURT: Yeah. Okay.

THE WITNESS: Restrained from—not allowed to go there—

THE COURT: Right.

THE WITNESS: —by the prison authorities. They give a written request. Then if the book is there—okay. Where it varies is in some institutions you can request more than one book at a time, and that does vary. Then the book is delivered to the prisoner. The—if it's available and if they know what book the prisoner is asking for, and then the prisoner uses it for the allotted time and it's returned to the law library. That's the basic system.

BY MR. ADAMS:

Q: Why is that a problem?

A: It's a problem for a lot of reasons. Number one, some of the books aren't always available. Number two, a very common problem is that unless the prisoner is very, very specific in terms of what they want, they often are not given anything.

* * *

[152] * * * prisoner's ability to use the law libraries that you observed, for example with regard to staffing and the training of legal staff in the law library?

A: Yes, there are a couple—two particular problems. One is with regard to the assistance that is or is not available to prisoners at the law libraries themselves.

Q: And what is that?

A: Well, specifically that is the fact that the two classes of people that work in those libraries, staff—ADOC staff members that work in the law libraries and prisoner law clerks that work in the law libraries. That first of all, for both of those groups, they are prohibited by policy from assisting prisoners on their own legal matters. They can give general assistance with the library but they cannot actually assist on legal matters. And most of the prisoners need that assistance.

Secondly, there are—for those prisoners who are unable to get physical access to the law library, generally locked down prisoners, they are provided assistance pursuant to policy by these legal assistants, the people—the prisoner legal assistants. And those legal assistants are without training, without supervision, and generally are unable to provide any significant assistance, in my opinion.

* * *

[154] Also these prisoner paralegals need some training, need training in procedure, and how then once you know the law and once you know how to use a law library, you can actually find a way to get the claims that your clients might have heard by courts, or get your claims presented. So that would be things like, you know, rules of procedure and just procedures in general, and the various things that you have to do to get papers filed and to get them heard by a court.

Q: In your tours of the various facilities did you come across any problems associated with prisoners, legal assistants and law clerks not having sufficient training?

A: Yes. Universally I was told by prison staff members, by the librarian—or by the legal assistants—excuse me, themselves that there is no training program for prisoner legal assistance of any depth or substance in the state.

Q: Do prisoners ever—your testimony earlier was that you had interviewed numerous prisoners. Did that include legal assistants as well?

A: Yes, in a number of situations, yes, I did talk to a number of legal assistants. Yes.

Q: Were legal assistants experiencing problems giving persons assistance?

A: Yes.

Q: Why was that and what were the problems?

A: Well again, I had legal assistants who told me that they [155] didn't feel comfortable in helping other prisoners because they did not have sufficient training. That's the one issue. The other issue—another issue is that a number of them expressed to me the desire to have someone with more training than they had to be able to, in effect, critique their work or critique their ideas. Someone they could turn to for some guidance themselves, because they—there was no such person for them to go to that had the training that they didn't have.

MR. STRUCK: I'm—

MR. ADAMS: Would you please indicate specific—

MR. STRUCK: Sorry. I was going to move to strike.

THE COURT: Why?

MR. STRUCK: It's—that testimony was just as before, based on hearsay.

THE COURT: Yell, I've been thinking about all of this a little bit further and he could actually give opinions, for example, as to what he believes would be the appropriate way in which access to the courts ought to function based on his expertise and his prior experience.

* * * *

[164] Q: I would like to take us back to our discussion of law library inventories.

MR. ADAMS: And for the Court's benefit, Your Honor, there had been a discussion between myself and Mr. Wilbur on the specific question I had asked him earlier with regard to the Muecke list, and that defendants' counsel obviously was not privy to that discussion and there was no indication that Mr. Wilbur, prior to a week ago, would be bringing that opinion forward on the issue of augmenting the Muecke list.

However defense attorney was fully aware that the issue of self-help litigation manuals was a point that the plaintiffs' counsel was very much concerned about, and was part of our discussions when we formulated the stipulations.

* * * *

[169] Q: Do you have a recommendation of how this situation can be addressed?

A: That's difficult. Obviously you cannot let prisoners do their own photocopying and things. I think about the only thing you can do is have a very clear policy that it's against policy for prison officials or employees to read anything they're copying for the prisoners. They can obviously look at it to verify that it's a legal document and legal materials, but not actually to read it, and that you post this policy and enforce the policy. But other than that I don't know what else you can do.

THE COURT: Are we talking about pleading papers now, or—

THE WITNESS: Yes.

THE COURT: —letters to lawyers?

THE WITNESS: We're generally talking about pleadings and attachments.

THE COURT: Why would pleading papers breach confidentiality, since presumably pleading papers would be seen as soon as they're served on the other side?

THE WITNESS: Oh, that's true. It might be a situation where—I guess in pleading papers you're right. I don't see how that would be a problem.

[170] THE COURT: Yeah, I don't either.

THE WITNESS: But another part of the problem is that in many situations prisoners are the ones who do the copying, and there are a lot of prisoners who don't want other prisoners to know the facts of their case, or whatever it is. But again, other than just putting up a policy and enforcing it I don't know what else can be done.

BY MR. ADAMS:

Q: Isn't that true that something—papers can be in various stages of completion, for example the draft?

THE COURT: For instance what?

BY MR. ADAMS:

Q: For example a draft, pleading papers can be in various stages of completion?

A: Sure. Sure.

Q: And as to that they would not be prepared to be filed and they will not go public.

A: Right: They might not be something that's going to be turned over, very, very definitely. Right.

MR. ADAMS: One moment with counsel.

(Pause)

MR. ADAMS: No further questions at this time.

* * * *

[173] from your direct exam that you haven't actually worked in a prison setting since 1983. Isn't that correct?

A: I have not been employed, right, since 1983, when I left Prison Legal Services in Michigan.

Q: Okay.

A: That's correct.

Q: And at the—when you were working for Prison Legal Services in Michigan isn't it true that you weren't allowed to bring lawsuits against the Michigan Department of Corrections?

A: We were not allowed to represent—formally represent prisoners in suits against the department. We were allowed to advise, but not to actually put our names in formal representation as lawyers.

Q: I think you talked a little bit about some other trials or other cases that you've testified on as an expert. I believe it was three other occasions besides this one. Is that correct?

A: I've only—of the cases that I worked on, one of them other than this actually went to trial where I was qualified as an expert and testified as an expert. In one

other, and in two others I testified in a little bit of different capacity.

Q: As an expert in the two others?

A: I could be specific if you would like.

[174] Q: Certainly.

A: In the case of Hadix v. Johnson, a case in the Eastern District of Michigan, I was—that was a suit, among other things, about access to the court. At the time the suit started I was the director of the program in the prison—

Q: Maybe I could interrupt you. Is that the one where you basically were a fact witness?

A: That's right. I was a fact witness—

Q: Okay. So—

A: —in that case.

Q: —if I understand then, besides this case there's only one other case in which you have testified as an expert witness?

A: That's correct.

Q: And on that other occasion were you also hired by the National Prison Project?

A: Yes, I was.

Q: You've talked a little bit about the different facilities and the different units that you went to within the facilities when you went on your tour. I don't know if it was clear on direct examination, when was the last time you visited a facility in the Arizona Department of Corrections?

A: My tours were on March 21, 22 and 23 of 1990, and August 20, 21, 22 and 23 of 1990.

Q: Okay. And it's my understanding that on all of those [175] tours that you went through through the Arizona Department of Corrections, you did not visit the law libraries—the two law libraries at Winslow. Is that correct?

A: That's correct. I was never at Winslow.

Q: And you were never at the law library at Alhambra?

A: Correct.

Q: You were never at the law library in Yuma?

A: That's right.

Q: You were never at the law library in Safford?

A: Correct.

Q: You were not at the law library in Ft. Grant?

A: Correct.

Q: And you did not go to the central unit law library in Florence?

A: Correct.

THE COURT: I think he testified that was because it was covered by Gluth decision.

MR. STRUCK: I understand, Your Honor.

BY MR. STRUCK:

Q: And also you did not go to the Rhining unit that is in ASPC Iman. Is that correct?

A: That is true.

Q: You testified about some opinions regarding the departmental indigency policy. You can't give a specific dollar figure that you think is appropriate. Is that [176] correct?

A: I just haven't thought about it, no. I'm not prepared to, no. That's correct.

Q: And in fact you have no idea what the department based on—the \$22 figure on. Is that right?

A: That's right, and I said that.

Q: And correct me if I'm wrong, but you don't know of any inmate who had to forego legal supplies or basic hygiene supplies as a result of this indigency policy. Isn't that correct?

A: No, that is not correct. I had people tell me that they had to chose in some situations.

Q: And who told you that they had to chose, sir?

A: I can go to my notes and find those.

Q: Okay. I have been through your notes and I didn't see that, so—

A: Okay.

Q: —maybe that might be—otherwise I would not have asked you. Maybe it might be a good idea for you to do that.

A: Okay. Then the situation I was thinking of is, again, where someone told me that he knew of situations where that had happened.

Q: Okay. So in other words the particular person that you talked to, that didn't happen to them. Is that right?

A: That's my understanding, yes.

[177] Q: And they were just telling you what they had been told by someone else?

A: By a number of people, yes.

Q: Okay.

THE COURT: Was this an inmate?

THE WITNESS: Yes, it was, Your Honor.

BY MR. STRUCK:

Q: So in other words, you can't tell us as you sit here today any specific inmates that had that particular problem. Is that correct?

A: Correct.

Q: There was some testimony about how various facilities or various libraries within the units don't allow access to the stacks, and we have stipulated facts on which units that is. And I think that your testimony was that in your opinion it was difficult to do legal research if you didn't have actual access to the stacks. You couldn't browse the stacks. Is that your testimony, sir?

A: Yes.

Q: Wouldn't you agree with me, sir, though, that an inmate would still have the ability to do legal research even though he doesn't have access to the stacks?

A: No, not necessarily. Given all of the other difficulties that I mentioned with reading abilities, etcetera—now if the person had all the other attributes that would allow him [178] to do that, again, reading ability, intel-

lect, etcetera, then perhaps that alone wouldn't do it. But this is just another factor that makes it more difficult, and in some situations makes it impossible for certain people to conduct legal research.

Q: Sir, do you have any knowledge of any inmates that missed a deadline or couldn't file a pleading because they didn't have access to the stacks?

A: No, not for that reason, no, I don't.

Q: Mr. Wilbur, do you acknowledge that at prison facilities a problem that occurs within the law library collections is that vandalism occurs, that inmates tear pages out of—and cases out of law books?

A: Just like law school, yes.

Q: That's right, and you do acknowledge that that is a problem?

A: It certainly—yes, is a problem, can be a problem.

THE COURT: Particularly the racy decisions, as I recall.

BY MR. STRUCK:

Q: There's been some testimony today about your opinion that there are illiterate inmates within the Department of Corrections that don't have access to the courts because they can't conduct their own research. Is that—

A: Yes.

[179] Q: Do you know what the literacy rate is within the Arizona Department of Corrections systems?

A: No, not—no, I do not.

Q: Do you know of any inmate who was denied access to the courts or unable to do legal research because he was illiterate?

A: I had inmates who told me that they just could not use a law library, and that was one of the reasons.

Q: Okay. Again, could you look through your notes and tell me what specific inmates told you that because they were illiterate they couldn't use the law library?

A: Okay. Now again, as I said, there are a number of people that told me they were unable. Whether or not my notes actually say this person said this was the exact reason, my opinion was that that's one of the factors that—again, Susan Coker at ACW told me she just did not know how to use a law library.

Q: Sir, did she tell—

A: She did not specifically mention literacy.

Q: Okay. My question is specifically as to literacy.

A: Okay. I do not know without looking if anyone specifically identified that as the reason they could not.

* * * *

[181] THE COURT: Yeah. That's what I mean about this not being a proper vehicle for dealing with the problems that really exist, including the problem of illiterates. I mean this is not a fight over who is going to get the biggest share of a corporate takeover or get the most bucks out of reshuffling of money, or something like that.

THE WITNESS: Again, I don't have any situation where someone specifically said that was the exact or only reason they could not utilize the law library.

BY MR. STRUCK:

Q: Okay. So just so I understand your testimony, you can't say today that you talked to an inmate who said I'm illiterate and I can't use the law library. Is that correct?

A: I did have one inmate who told me that he was dyslexic and had been diagnosed as dyslexic and couldn't read, an inmate at SMU. He certainly couldn't use the law library.

Q: Okay. Did that particular inmate—do you happen to know what his name is?

A: I can tell you. Okay. Yes. His name was Frank Bartholic.

Q: Okay. Yes. Frank Bartholic. Now listen to my question carefully, can you tell me that Mr. Bartholic

told you because of this dyslexia problem he wasn't able to file something with the court or he missed a court deadline, [182] basically that he couldn't access the court because of that problem?

A: Well, he told me he was dyslexic. He told me—I'm referring to my notes. He told me that he can't read or write, except very slowly, that he can't write letters. I probably made the leap that it would be difficult for him to do legal research. He may not have actually specifically said that to me.

Q: So then your testimony is, sir, you can't say whether he, as a result of this problem, could not access the court. Is that correct?

A: No, I think I can say that. What I can't say is that he told me specifically that it was dyslexia that kept him from doing it, but I think I can say based on my experience that if he's dyslexic, as he said, and has those problems that he could not access the courts on his own and do legal research.

Q: Okay. But my question is did this inmate tell you—

THE COURT: He already said he didn't, told you two times.

THE WITNESS: He didn't tell me.

MR. STRUCK: Okay. Well, I just want to—

THE COURT: Three times.

MR. STRUCK: —make it clear. Okay. I didn't—

THE COURT: I don't know how a fourth time makes it clearer.

[183] MR. STRUCK: I didn't hear that the way you heard it. So I can move on.

BY MR. STRUCK:

Q: There's also some testimony regarding inmates who can't speak English earlier. Do you know what the percentage of non English speaking inmates is within the Department of Corrections?

A: No, I do not.

Q: Do you know of any particular inmates who were denied access to the courts, couldn't file a pleading, missed a deadline because they can't speak English.

A: Again, I was told that there were no English speaking prisoners who were unable to use the libraries, etcetera, but I did not actually speak to any of them.

Q: Okay. So in other words you don't know that any of them had a problem accessing the court?

A: None told me that directly. Correct.

Q: Okay. There was also some testimony this afternoon regarding training, and when I'm referring to training I'm talking about actual training of the inmates. And—let's see, I believe that you said that there is—the legal assistants have no training. That was a quote that I wrote down right here. Is that—

A: Well, I might have. I know I also said they don't have any systematic intensive training program, but generally they [184] don't have training. Yes, that's my testimony.

Q: Okay. So—

A: Generally there's no training.

Q: But you are aware that there is training in some of the facilities within the Department of Corrections?

A: Well, I am aware that on one—

THE COURT: Are we excluding the ones covered—

MR. STRUCK: I'm talking about—

THE COURT: —by the Gluth decision?

MR. STRUCK: I'm talking just about the facilities that Mr. Wilbur visited.

THE WITNESS: I am—

THE COURT: Okay.

THE WITNESS: I'm sorry. I am aware that at Tucson there was a one day training class given to some legal assistants. I'm not sure if it was given one time or twice, at least at the time that I visited. I'm aware of that if that's what you mean.

BY MR. STRUCK:

Q: In fact don't your notes reflect that that was an 18 and a half hour program?

A: Perhaps. I don't remember if they do or not.

Q: You actually spoke with the individual who was responsible for the program, Mr. Street?

A: Mr. Street are you referring to?

[185] Q: Yes sir. If you find your note—

A: Let me turn—

Q: —that says—

A: What page number on the top left does my notes have of the—

Q: Let me look.

A: —Tucson there?

Q: It's page seven, Tucson.

A: Thank you.

Q: Says Tucson continued at the top of the page.

A: Yes. It says that there was 18 and a half hours worth of training is what he told me, yes.

Q: Isn't it true that there is also paralegal courses that are available through correspondence or otherwise to inmates?

A: There may be. I'm not—I can't tell you any specific ones. I don't know what's available here in Arizona, etcetera, but—

Q: You didn't—do you recall speaking to Mr. John Adamson?

A: I recall speaking to him.

Q: Okay. Let me see if I can find—

A: I can—

Q: —Mr. Adamson in your notes.

A: I can find it. He might have—well, I don't remember.

Q: He's on page—well, there's no page number on my copy. It's 3/23 CB6.

[186] A: So is it the first—were his names at the top?

Q: Yes sir.

A: Okay. And where on that page? I've got that page.

Q: If you look down in the middle that says—

A: But he took a—okay. He took a legal research course. What I said is there's no training provided by the Department of—

Q: Okay. Okay.

A: —of Corrections.

Q: But my question is then, you are aware that there are training courses available for inmates to take?

A: I assume that was taken before he was an inmate, but I don't know. It says it was at ASU.

Q: Okay.

A: I don't know though. I don't know.

Q: Would you read the next sentence please?

A: Was a Central Arizona—well, he took a legal research course at ASU before prison, said.

Q: Yeah.

A: Was a Central Arizona College research course via television that he evidently took.

Q: Okay.

A: Yes.

* * * *

[189] MR. STRUCK: Your Honor, at this time I would like to move to admit—or actually we've stipulated to Exhibit 814, which is a—

THE COURT: Well, is that agreeable counsel, 814? Counsel for plaintiffs, is that agreeable? Any objection?

MR. ADAMS: We have no objection. It's just that doesn't go to the point that Mr. Wilbur is speaking to.

MR. STRUCK: Well that—

THE COURT: Well, I don't really care at this point what it is, just so long if you stipulate to it I'll let it in. Okay. It's admitted.

MR. STRUCK: Thank you.

THE COURT: Because I'm not going to read it right now anyway.

BY MR. STRUCK:

Q: Well, Exhibit 814 is the New York State Department of Correctional Services Handbook for Administration of Correctional Facility Law Libraries.

A: Yes.

Q: Okay. Are you aware that the legal training program within the New York correctional system calls for inmates training other inmates?

A: I read that, but that's not what I was talking about when I answered in the deposition. I was talking about—

* * * *

[193] A: No, I'm not.

Q: On your tour did anyone ever discuss with you the availability of Arizona State Law School Clinic?

A: I don't recall that, no. Somebody might have mentioned it to me but I don't recall.

Q: Okay. Why don't you look at your notes.

A: Okay.

Q: That's at Perryville page three.

(Pause)

THE COURT: Kind of interesting, when they did do that there was vociferous protest that state fund used to do that, and the legislature let it—and the governor agreed to let it go.

MR. STRUCK: The fact remains that it is available.

THE COURT: That's kind of interesting though.

THE WITNESS: Yes, that's probably why I recall it. There's an indication here that someone told me there was some kind of program at ASU Law School.

BY MR. STRUCK:

Q: That provides legal assistance to inmates at Perryville?

A: My note says that this person:

"Says ASU Law School has inmate legal assistant program. He writes them if he is at an impasse."

Q: Okay.

THE COURT: I guess it was the Board of Regents [194] that agreed to let them continue doing what they're doing, namely use state funds to represent prisoners, even though the Department of Corrections objected to it.

BY MR. STRUCK:

Q: Are you familiar with the Capital Representation Project?

A: Here in Arizona?

Q: Yes sir.

A: Not specifically. I'm familiar with the fact that they have those in states that have the death penalty but not—don't have any firsthand knowledge of Arizona's.

Q: Getting back to training again. I believe in your direct examination today you said that there is no staff training. Is that correct, DOC staff training?

A: For librarians?

Q: Yes sir.

A: Library staff?

Q: Sir sir.

A: Yeah. There's no program of training, yes. I think something to that effect, yes.

Q: Okay. Would you agree with me though that a lot of the staff within the Arizona Department of Corrections that work in the law libraries are training and have been able to attend different programs for training?

A: I know of one. Everyone—a number of the library staff people at various institutions mentioned they had gone to [195] Northern Arizona University for a day or a couple of day program. That's the one everyone seemed to mention to me. That's the only one I'm familiar with. There may be others.

Q: Okay. And you say a number of them told you that?

A: At least two or three did.

Q: Okay.

THE COURT: By the way, I mentioned that earlier one because I was taking judicial notice of the fact it involved a case in which I was the presiding judge about the Department of Corrections opposing the Arizona State College of Law, the project assisting inmates in the prison.

BY MR. STRUCK:

Q: Now there is some testimony today about the adequacy of the collections within the Arizona Department of Corrections. You would agree with me that the law libraries within the Arizona Department of Corrections are essentially adequate?

A: Yes.

Q: In fact, they're pretty good. Aren't they?

A: As prison law libraries go, yes, they certainly are.

Q: Let me just go through your notes on some of the law libraries that you reviewed, sir. The Mohave law library, you recall writing in there that the collection was more than adequate?

A: Not specifically, but I'm sure I did. If you tell me that I'm—again, I generally believe that the law library [196] collections are very adequate for prison law libraries.

Q: In fact the Perryville facility law library, you said that it was excellent, totally up to date law library, and it was the most complete prison law library you have ever seen. Is that accurate?

A: I think I was carried away and said that in my notes. Yes. I remember saying that.

Q: But you did write that down?

A: But yeah, and I have no problem with the adequacy of the libraries. The problem is no one knows how to use them.

Q: I understand that's your opinion, sir. Thank you. I have no further questions.

MS. AIYETORO: Your Honor, could we have—

MR. ADAMS: And Your Honor, I request a two minute break.

THE COURT: You want a break you say?

MR. ADAMS: Yes, Your Honor, please.

THE COURT: All right. I have to quit at 4:00 remember.

* * * *

DECEMBER 17, 1991

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[60] CROSS EXAMINATION

BY MR. STRUCK:

Q: Mr. Celaya, in regard to your testimony about legal assistance, I believe you testified that you requested a particular inmate, Richard Gray, and you were denied access to that particular legal assistant. Is that correct?

A: At one point, yes.

Q: Is it your understanding that the reason why you were denied access to that particular inmate is because he was a different custody level than you were?

A: No, not different custody level, different side of the building, of the unit.

Q: At the time that you were denied access to Mr. Gray, were you told that you couldn't have access to any legal assistance?

A: No I was not, other than inmate Gray not being a legal representative.

Q: And in fact after you got the list of legal assistants, you made a request for a different legal assistant, and [61] obtained help on your legal work. Isn't that right?

A: Yes I did.

Q: The telephone call that we just discussed, once it was cleared up that the call actually was from your

lawyer, or actually was going to be to your lawyer, didn't you get the call within one and a half week—about a week and a half of when you first requested the call?

A: Yes I did.

Q: When we talk about the confidential information area that you testified about, now I believe you said your last violation was around March of 1988, and you said that was a 3-7, using hands and fists. Is that right?

A: Yes.

MS. AIYETORO: Your Honor, I'd like to have the record clear. He said his last major violation or minor as well.

MR. STRUCK: Fine, okay. I'm talking about major violations. I'm sorry.

BY MR. STRUCK:

Q: Now a 3-7, using hands and fists, that's actually punching somebody or—is that correct?

A: Yes it is.

* * * *

[110] THE COURT: —and point the mike toward your mouth, and get close to it?

BY MS. AIYETORO:

Q: Unfortunately we're getting a new mike after you testify. Mr. Bishop, where are you present incarcerated?

A: The Arizona State Prison, Florence, Special Management Unit.

Q: And how long have you been in the Special Management Unit?

A: Since February 12th of '88.

Q: And what is your custody level?

A: My public risk score is a four, and my institution risk score is a one.

Q: Do you have a paid or volunteer job in the Special Management Unit?

A: It's volunteer.

Q: It's a volunteer job? What do you do?

A: Legal assistant.

Q: And what does a legal assistant do?

A: Just about everything that comes up, from disciplinary to, you know, assisting guys for fines, post convictions, or appeals, or several cases, just whatever.

Q: How did you become a legal assistant?

A: Just volunteered for it back in March of '88.

Q: Did you send a letter or a memo to anybody?

[111] A: Well they have a weekly bulletin at SMU. It comes out on Friday night, and they were asking for them, and they didn't have one in the area where I lived. So I put a kite in, and I guess it was Mr. Upchurch that gave me the job.

Q: Now you said that they didn't have one at that time in the area you were in. Where were you?

A: Wing one, Able Cluster.

Q: And how many prisoners were in that area?

A: Forty-eight.

Q: What are—as a legal assistant, I know you described what did you do. Did the ADC or the Arizona Department of Corrections provide you with any training to perform the function of a legal assistant?

A: No ma'am.

Q: Did you obtain any training to perform that function anywhere else?

A: No. I've been involved in a couple paralegal courses, but I never finished them.

Q: Where were the courses that you participated in?

A: One was in Jefferson City, Missouri at Missouri State Prison, and the other one, I didn't get to finish that because I came back to Arizona. And the other one was from a correspondence course from the Southern Career Institute here last year, and I didn't get to finish that either.

* * * *

[113] THE COURT: In other words, you were it before that. You were the legal assistant?

THE WITNESS: Yes, Your Honor.

THE COURT: Before that?

THE WITNESS: Yes.

THE COURT: How long a period of time before that were you the legal assistant there?

THE WITNESS: I would say probably about two years. I believe that it was in October-November of '89 when—

BY MS. AIYETORO:

Q: You had the short break in service?

A: Yes.

Q: Are you able to help everyone who requests your help?

A: Well for the most part, yes. There's a couple guys there now, and have been for the last few years, that I haven't been able to do anything for.

Q: And why is that?

A: Well both of them are blind. And I've attempted, in October of '88 when I was brought back to—I was gone for about four months at the Gila County Jail. When I came back I had a guy approach me about helping him. I filed a State habeas corpus for him, and it got to where I couldn't get access to this guy, and I couldn't communicate with him. Because everything in his case was predicated on a medical [114] issue of his being blind, and his medical records are confidential. The State wouldn't let me look at them, and he had no way of reading them, and they wouldn't read them to him, and it just became to the point where it was just too frustrating for me, and I couldn't do nothing for the guy.

Q: And who was that prisoner?

A: Roman Stone.

Q: Now do prisoners come to you for assistance who are unable to read and write, to your knowledge?

A: Yes, definitely.

Q: How frequently does that happen?

A: It's not that frequent, but it does occur. One guy whose case is in this court right here. I've had it for about two years. The guy has a third grade—he can't even hardly write his name. I have to read everything. Every document he gets I have to read to him. Then I have to—whatever I prepare for him to file, I have to go read it to him, and he just doesn't—he has no concept of anything.

Q: Would you say it happens once a month that someone comes to you that's very limited?

A: Well it's kind of hard to pinpoint exact times, because, you know, it might happen two or three times in a row, and then not happen for a few months. But it is rampant there in SMU people, that—

Q: So that in your cluster, over the past several years, [115] you've gotten a number of prisoners who have come to you for assistance who were unable to read and write. Is that true?

A: Yes ma'am.

Q: And when you get someone that are unable to read and write—I know you have the example of this one prisoner who was unable to read and write, and you had to read his material for him.

A: Yes.

Q: Is that true with all of them that are unable to read and write? You have to assist to that extent?

A: Yes, if it's possible. Some of them, I try to get other guys that are right in their pods with them to read it to them.

Q: Now I think it may be helpful, because you're restricted to working within a cluster, if you could describe—is the cluster like one big room with cells all around?

A: No ma'am. It's—there's six pods.

Q: And by pods, are those like defined living areas with cells?

A: Yes ma'am.

Q: Okay.

A: There are eight cells in each pod, and there's six pods to a cluster, and this is isolated off of a hallway, you know, and there's four of those on each one of the wings.

* * * *

[117] BY MS. AIYETORO:

Q: Were—do you recall assisting Mr. Madden in any legal matters in 1988?

A: Yes ma'am. I handled a case for him in district court in Tucson that we prevailed on on a plaintiff's motion for summary judgment.

Q: And was Mr. Madden one of those prisoners who could read and write?

A: Yes.

Q: And did you at some point ask him to do something?

A: Well at the time I was real busy with some stuff I had. So instead of me going to the library and looking stuff up, I would write down a list of stuff for him to go look up and to read, and it was quite frequent, probably two or three times a week.

Q: Now if—have you asked prisoners, as you have with Mr. Madden, or did with Mr. Madden, to go and get things for you, and have any problems with them bringing that material back or information back?

[118] A: Yes.

Q: And what have been the problems?

A: Well a lot of the problems are the guys will go up there, and they'll ask for it, and they'll come back. Can I give you an example?

Q: Why don't you give an example, and we'll see if—

A: I had an old code prisoner, Frank Bender, and I told him to go up and look at State v. Valenzuela, which is the Arizona Supreme Court's decision on good time credits for old code prisoners. So the guy comes

back, and I said well what happened. He said I didn't get it.

MR. HOCHULI: Objection, hearsay, Your Honor.

MS. AIYETORO: When the—

THE COURT: Yeah.

MS. AIYETORO: I will rephrase the question, Your Honor.

BY MS. AIYETORO:

Q: When he came back, did he have the information that you wanted him to have?

A: No ma'am, he didn't.

Q: Were you in the cluster when they took him out?

A: Yes.

Q: And is it made clear when they take prisoners out, where they're taking them?

A: Yes it is.

* * * *

[138] THE COURT: Well I don't want to get into a lot of this stuff. Mr. Hochuli sometimes has a flash point that I don't find particularly helpful, particularly when we have a serious issue before the Court, and he tells me I go on and on. I take very seriously if writs aren't followed, and the orders of the Court aren't obeyed. That's my job you know. But at any rate, we'll see what the green cards say. Let's not get into an argument about it. We'll see what they say, and we can go on from there.

BY MS. AIYETORO:

Q: I'm sorry, Mr. Bishop. I think we were just finishing up talking about the officers in the—in your meeting with your legal representative—

A: Yes ma'am.

Q: —or when you are meeting with people that you are representing. Have you had any problems with staff after providing legal assistance to any prisoner?

A: Yeah. There's been a few isolated cases that were significant enough for me to remember. You know a lot of things happen. You know you have to—

Q: Can you give me one example of a problem that you had?

A: Yes. There was a guy—in fact I filed a civil complaint for him. In fact it was right here I believe before Your [139] Honor here. It was Nathan Daley v. Officer Aragon. Guy got his head smashed—allegedly smashed in the concrete. I filed a suit for the guy, you know. And then all of a sudden, you know, my cell started getting shook down two or three times a week, and you know, I started getting talked to like I was an idiot, you know, and locked in the shower for extended periods, and denied rec and shower and stuff like that.

And then when it came to a head, I was on Ramidon fast. And the officer come up and picked up my tray, and it had a cigarette butt in it. You know, you're not supposed to smoke or drink or anything during daylight hours. Well it was already after dark. So the guy tells me well that's it. You know, you're off of Ramidon. So I confronted him with the issue right then, and we had some words—

THE COURT: What is the guard's name? Do you know?

THE WITNESS: Officer Aragon. And we had a confrontation about it right there at the cell front. And the guy just told me—he said hey, what goes around comes around. Well that led me to believe that everything that was happening to me was because of this incident where I filed a suit against him. So I immediately wrote a letter to Major Padilla, and the incident—it was rectified, and I've never had any problem with the guy since.

BY MS. AIYETORO:

* * * *

[143] Q: Mr. Bishop, do you have occasion to use the law library?

A: Yes ma'am.

Q: How often do you use it?

A: At least as necessary, at least as possible.

Q: How often do you use it?

A: I would say an average once a month, sometimes more if I really have to go up there.

Q: How do you request to go to the law library?

A: You fill out an institution kite, and turn it in on the graveyard shift, which is the shift from 9:00 till 5:00 in the morning, something like that.

Q: The shift is from 9:00 at night till 5:00 in the morning?

A: Yes, ma'am.

Q: How long does it usually take to get to the law library after you make a request?

A: Now or then?

Q: Why don't you tell me now, and tell me how long that's been the case.

A: It takes about 48 hours, and that's picked up just in the last maybe two, two and a half months.

* * * *

[145] * * * sit when you go to the law library.

A: It's a small room approximately three and a half by five. It has a stool that sits in front of a desk similar to this one here. Just above that there is a tray slot. It's approximately I would say maybe five by nine slot.

Q: Five inches by nine inches?

A: Yes ma'am. And it has a key on it where it's locked. And just above that is a window. I would say—I don't know the dimensions, a little wider than your hand, and probably two and a half foot tall.

And you go in there. And to get the people's attention in the law library, you have to knock on the window, and they're in another room inside of the law library itself. And you knock on the window, and they come and open the door, and they ask you what you want.

Q: And when you say they ask you what you want, who is they?

A: One of the correctional officers or the librarian that works in the library.

Q: And have you ever had any problems getting the books you needed from either the officer or the law librarian?

A: Yes, definitely. And one of the reasons is I don't know what's in there.

Q: And what problems have you had?

A: Well you have to be specific, you know, exact citations on what you want. Like if you go in and you ask for—are [146] you referring to me or—

Q: I'm asking to you.

A: —any prisoner in general?

Q: No. I'm asking for you personally.

A: With me it's not that significant, because I know what a descriptive word index is, and the case index and stuff like that.

Q: But you have to ask specifically for what you want.

A: Yes.

Q: The descriptive word index, or case index, or a volume of a book.

A: Yes.

(Change of Tape)

BY MS. AIYETORO:

Q: Now are there law clerks, prisoner law clerks in the law library?

A: Yes there are.

Q: And do they ever come and talk with you, and help you get material?

A: Definitely not. They're not allowed to.

Q: They're not allowed to talk with you.

A: No ma'am.

Q: Now you indicated that one of the problems is that many times you don't know exactly what may be in the law library, other than I would assume the general materials that are * * *

[148] Q: Are there books that in your experience are especially helpful in preparing lawsuits?

A: Well yes ma'am. Can I explain that?

Q: Well I was going to ask you what books are they?

A: You mean lawsuits or criminal or—

Q: Well why don't you give me some ideas of some books that you have found to be helpful in preparing lawsuits, whether they be criminal or civil or whatever.

A: Are we talking about for myself, or for any prisoner that utilizes the law library?

Q: Well at this point we have to just talk about you, because you're the witness. You can't talk about what other prisoners have told you, 'cause then you're draw a hearsay objection, and I've got to argue with the counsel about it.

A: Yes ma'am.

Q: I don't want to do that.

A: I think the best for any prisoner, especially like myself who, you know, isn't educated. I only have a sixth grade education, formal education.

Q: Uh huh.

A: I received my GED in 1985. So therefore, you know, my—there's a lot of things I don't understand. The Prisoner Self Help Litigation Manual. You can under—anybody that can read and write can understand it. I mean it just takes you step by step.

* * * *

[150] Q: And has there been a time when you haven't had those two things, Prisoner Self Help Litigation Manual and the Georgetown Law Journal?

A: You mean my own personal ones?

Q: Yes.

A: There's been times when I haven't had the up-to-date ones. I don't have the up-to-date ones now.

Q: Has it been more difficult for you to get into what you were doing without the use of those volumes?

A: Definitely.

THE COURT: Can I ask you something? This is not one within the Gluth decision I take it.

MS. AIYETORO: No. It's not within the—

THE COURT: Where is this precisely, this institution? Where is it—

MS. AIYETORO: Special Management Unit. It's in Florence, Your Honor. It used to be by itself, but now that they've opened what they call the Rynning Unit, it is the unit of the Rynning Unit. It's the highest security facility in the State of Arizona.

THE COURT: And it wasn't—as I recall, it wasn't covered by Gluth.

MS. AIYETORO: No, it wasn't covered by Gluth at [151] all.

THE COURT: Guess we're going to hack away prison by prison, huh, throughout the whole state?

MS. AIYETORO: Well we're hoping since this is a statewide case, Your Honor, we can get a—if we prevail, we can get a statewide order.

BY MS. AIYETORO:

Q: How do you get legal documents copied?

A: You have to put them in an envelope. And between 9:00 and midnight you have to slide them under your door.

Q: 9:00 p.m. and midnight.

A: Yes ma'am. Excuse me.

Q: Uh huh.

A: Between 9:00 p.m. and midnight, you have to slide them under your door, and then an officer picks them up.

Q: And how long does it take to get the copies back?

A: Well again that's—you mean now?

Q: Now.

A: It takes about two to three days now.

Q: And has that been a problem in the past? Or I'm sorry, not a problem in the past. Has that taken longer in the past?

A: It's longer and shorter. For a while there I was getting them back in 24 hours, and it has taken as long as 12 days.

Q: Is carbon paper allowed in the SMU?

[152] A: No ma'am.

Q: And have you ever filed a grievance concerning carbon paper not being allowed?

A: I filed a grievance, and followed it all the way through the director, Mr. Lewis.

Q: And why did you grieve not having carbon paper?

A: Well I write a lot of letters to guys for their lawyers and stuff like that. And to get copies of that, you have to—like I say, you have to put it in an envelope similar to this manilla envelope here, and slide it under your door. Well you don't know how many people's hands it goes through. Then when it gets to the library, all the copying is done by prisoners.

And what I think is significant about it, it's not the fact that maybe just a prisoner takes it out and copies it, but right up on the wall over the copier, there's a note to anyone who uses the copying machine, that they have to log down and identify what the document is that they have copied for a specific prisoner. So therefore any prisoner who picks it up has to read at least part of it to find out what it is. And I have personally observed them guys 50 times. I'm standing there watching prisoners go through and read every single word on whatever they're copying, my documents included.

* * * *

[166] CROSS EXAMINATION

BY MR. HOCHULI:

Q: Is it Department policy that inmates do their own research, or a legal assistant can do research for another inmate. Is that correct?

A: Yes sir, either way.

Q: So inmate Madden is not allowed to do research for you. He can do research for himself. Is that correct?

A: No it's not correct.

Q: Is inmate Madden a legal assistant?

A: No he isn't.

Q: You said that he is not—that inmates are allowed to only do legal research for themselves, or if you're a legal assistant you can do research for someone else. Correct?

A: I'm sorry. I misunderstood your question.

Q: Okay.

A: But no, there's no rule that says one prisoner can not do research for another one.

Q: Okay. Am I correct that as of two months ago you were handling approximately 11 cases?

A: Yes. It's more now.

Q: And of those 11 cases, seven of them were yours.

A: Yes sir. But if I may explain myself. Those are—

* * * *

[198] Q: Was this a leg brace?

A: Yes sir.

Q: I'm sorry. Go ahead.

A: My leg kept buckling on me, and causing me a lot of problems.

Q: And so you went to sick call about this?

A: Yes Sir.

Q: And how long did it take you to see the provider after going to sick call?

A: About—it went between two and three months. I can't remember exactly.

Q: Can you tell us what your educational background is?

A: Seventh grade special ed.

Q: Do you suffer from any reading disorder or learning disorder?

A: Yes sir.

Q: And what is that?

A: Dyslexia.

Q: Dyslexia?

A: Yes sir.

Q: And when were you first diagnosed with dyslexia?

[199] A: Back in 1972.

Q: So that was when you were quite young. Is that right? How old were you in 1972?

A: I was 12 years old.

Q: How does dyslexia affect you?

A: It causes me to see letters backwards. I miss whole lines when I'm reading, and it makes it where I have to read a lot slower, and reread the same line over and over, make sure I got all of it, and got the words right.

Q: At some point during your incarceration in Arizona, did you file a lawsuit in federal court?

A: Yes sir, I did.

Q: Approximately when was that?

A: In 1987.

Q: Where were you housed at that time?

A: I was in Florence Central Unit.

Q: What was the lawsuit about?

A: It was access to outside recreation, access to the library, and medical. This is down in Tucson.

Q: Did you file this case all by yourself, or did you have some help?

A: I had some help from a co-defendant.

Q: When you say a co-defendant, you mean someone else who was working on the case with you?

A: Yes sir. He had his own case going, and we were filing [200] on the same thing. So he was a lot of help.

Q: What was the name of this person?

A: Gary Chi, Chim, something like that.

Q: Gary Ching?

A: Yes sir.

Q: At some point after you filed this lawsuit, were you transferred?

A: Yes sir, I was.

Q: Where were you transferred to?

A: SMU.

Q: Did you have any difficulty pursuing your lawsuit in SMU?

A: Yes sir, I did.

Q: And why was that?

A: I was taken to the library, and being that you had to specify exactly what case you want, it made it very difficult for me to request the cases I wanted, being that I did not know what cases I wanted. I had to know exact citations and everything. I did not know this information. And I could not get no help from library personnel to help me.

Q: Did you ask library personnel to help you?

A: Yes sir, I did.

Q: Who did you ask?

A: I asked CSO Turner who was the acting librarian.

Q: And what did CSO Turner say?

A: She said that she was not allowed to do that, that I had [201] to request specific information, you know, citations, and then one of the clerks can get that for me that away, but that's the only way I can get the information I need.

Q: So once again you needed to know specific case citations.

A: Yes sir.

Q: And you did not.

A: No sir.

Q: Were there any prisoners available to help you?

A: No sir, there was not.

Q: When you went to use the law library at SMU, how did that work? What was the set up for you using the law library?

A: I'd submit a kite to go to the library, and I have to request it 24 hours in advance. I go—they take me down to the law library, put me in a small room. And well like the other guy said, there's a table about like this, little tiny room, not much room to walk or anything, had a little food window up here, and then it had a big window where they can look through you at, make sure you're working or whatever. And you just tell them what citations you want, and they get them for you.

Q: How—when you came to the library, and were put in that little cage or room, how long were you supposed to be allowed to stay in there?

A: You're supposed to be allowed to stay there, at that time it was two to two and a half hours I think, but I was only [202] staying half an hour.

Q: Why were you only staying half an hour?

A: The librarian would call the officer to escort me back to my cell, because I was being a nuisance and not doing no legal work.

Q: And why were you not—was it true that you were not doing any legal work?

A: No sir. I was trying to find cases that went along with mine by trying to catch the clerks every chance I got when the officer wasn't sitting right there at the desk, and having the clerk tell them what I'm working on, and see if they can find me something to help me.

Q: When you were in SMU, were you—

THE COURT: Excuse me. And that wasn't allowed. Is that why—

THE WITNESS: Yes sir.

BY MR. FATHI:

Q: When you were in SMU, were you ever denied access to law library altogether?

A: Yes sir, I was.

Q: And what reason were you given for that?

A: I was first told it was because being a nuisance, and then later I was told again by my counselor I was being a nuisance. Then it finally came up to the fact that I was being charged with destroying one of the law books.

[203] Q: Let me take those one at a time. Who was your counselor at this time?

A: CSO Perkins—I mean CPO Perkins.

Q: And CPO Perkins told you that you were being denied access to the law library, because you were being a nuisance?

A: Yes sir.

Q: Did CPO Perkins explain how you were being a nuisance?

A: He said that I was going down there. I was not doing no legal research, that I was just trying to get out to talk to people. And every time one of the clerks walked by the window I was knocking on the window trying to get him over there to talk to me.

Q: Were you knocking on the window, and trying to get the clerks over there to talk to you?

A: Only to get some help with what I needed.

Q: And you said that CPO Perkins said you were accused of destroying a book.

A: Yes sir.

Q: Did he ever give you anymore information than that?

A: No sir, he did not.

Q: Did you destroy any book?

A: No sir, I did not. I even requested that I be given a disciplinary action, and a chance to defend myself on the charge that I was being charged with.

Q: Did you ever receive a disciplinary charge out of that?

[204] A: No sir, I did not.

Q: What eventually happened to your lawsuit in federal court that we were discussing earlier?

A: It was dismissed with prejudice.

Q: While you were at SMU, were you able to meet filing deadlines for that lawsuit?

A: No sir, I was not.

Q: Have you ever been denied access to the law library at any other facility you've been housed in?

A: Yes sir.

Q: What facility is that?

A: Winslow.

Q: And when were you denied access to the law library?

A: I'd say it was about four months ago when all the problems really started hitting.

Q: And how did it happen that you were denied access to the law library?

A: I went to the library one day, and I walked up to the law clerk who was standing behind the counter. I requested some cases that I already knew about. I knew what cases I was looking for, and I requested law books on those cases. He told me I had to talk to the staff member working the desk that day. So I went back, and I talked to the counselor who was working there.

* * * *

[253] Q: Did you receive any training from the Arizona Department of Corrections to do this job?

A: No.

Q: Have you ever had any legal training?

A: Yes I have.

Q: Where?

A: In Trenton, New Jersey.

Q: When?

A: It was '76.

Q: And what training was that?

A: It was just research.

Q: So you had a course in research.

A: Right.

Q: Can—

THE COURT: Legal research?

THE WITNESS: Yes.

BY MS. AIYETORO:

Q: Now at the Rynning Unit can prisoners browse the shelves? Can they go and look at what's on the shelf, and take a book and look at it?

A: Yes they can.

Q: And are you responsible—you said that you were responsible for the inventory, did you not?

A: Yes.

* * * *

[256] Q: So I'm asking you are there books that don't appear on the Central list—

A: On the required list?

Q: Yes, on the required list, the list that you've gotten that says these are the books—

A: Right.

Q: —that you are required to have. Are there books that you are familiar with that do not appear on that list that you feel are important to doing legal research and filing lawsuits?

A: Yes I do.

Q: And what books are those?

A: Pacific Seconds.

Q: And why are the Pacific Seconds important?

A: Well I've come to find that in shepherdizing Arizona cases, nine times out of ten you refer to other cases from other states in the west that are covered in the Pacific Seconds.

Q: And if they're not Arizona cases you can't get them. Is that—

A: Exactly.

Q: Now are there any other books that are not on that required list that you find important to doing—

A: Yes.

Q: —research and filing lawsuits?

* * * *

[258] A: Yes I am.

Q: And you said this was a voluntary. How were you selected to be a legal assistant?

A: I submitted the paperwork myself.

Q: Was there like an application form?

A: There's a form that you fill out.

Q: Now did that form test you in any way in terms of your legal knowledge?

A: No it did not.

Q: Now were you provided any training by the Arizona Department of Corrections to be a legal assistant?

A: No.

Q: Approximately how many prisoners request your assistance, say on a weekly basis?

A: An average seven or eight.

Q: And are you able to help all the prisoners that request your help?

A: No.

Q: Why not?

A: Because of the case load and—

Q: And—go on.

A: —and it would interfere with my regular job.

Q: And are you able to refer these to other legal assistants?

A: Yes I am.

[259] Q: And are there prisoners—so everybody who you can't handle, another legal assistant handles them?

A: Not necessarily.

Q: What's the problem with that?

A: Not enough assistants.

Q: How many legal assistants are, to your knowledge, on the yard at Rynning?

A: Eight.

Q: And do you know what the population is at Rynning?

A: It's an 800 man unit, and it's full.

MS. AIYETORO: I have no further questions at this time, Your Honor.

CROSS EXAMINATION

BY MR. STRUCK:

Q: Mr. Doe 1, you testified that you've had problems with ear infections for quite some time. Isn't that true?

A: Yes.

Q: In fact you've had those problems since 1973.

A: Yes.

Q: Prior to coming into the Arizona Department of Corrections, isn't it true that doctors would prescribe drops or pain medication for your ear problems?

A: Yes.

* * * *

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[9] Q: And if it's an emergency you can get in the same day, can't you?

A: Yes, you can.

Q: Are you aware that there are some inmates that are in lockdown at the Reining Unit?

A: Yes, I am.

Q: Those inmates have direct access to the law library, don't they?

A: Yes, they do.

Q: Thank you.

MR. STRUCK: I have nothing further.

MS. AIYETORO: Nothing further.

THE COURT: Thank you. You can step down. Did I say to you all that if you wanted to have a coffee or Coke on your table you could do it? I wasn't sure if it was your group or the last group you had here last week.

MS. BENDHEIM: Are you ready Aiyetoro? Are you ready?

MS. AIYETORO: Yes, I am.

MS. BENDHEIM: Your Honor, at this time we will—the plaintiffs will call David Murphy.

THE COURT: Okay. Where is he?

MS. BENDHEIM: He's right back here. Mr. Murphy.

THE COURT: I don't think he heard you.

MS. BENDHEIM: Mr. Murphy.

* * * *

[101] THE COURT: Out of your cell you mean, or—

THE WITNESS: Yeah, out of your cell. I mean there's no place for you to work, no place to hold client talks or anything like that.

BY MS. AIYETORO:

Q: Now did you receive any training from the Department of Corrections to do this job?

A: No sir—no ma'am, excuse me.

Q: It's okay. Have you ever received any training in legal research or—

A: I did on my own.

Q: Okay. And where was that?

A: Southern Career Institute, which I'm currently in now.

Q: You're in the program now?

A: Yes, I'm on my last course and then I'll be a—they give you a paralegal certificate.

Q: And you're paying for that on your own?

A: Yes ma'am.

Q: Now you indicated that you had been providing servi—legal services for how long?

A: I believe I applied in 1989.

Q: Now have you ever had any difficulty in providing legal assistance to prisoners in any specific location in the facility?

A: Yes, in—mostly in the complex detention unit.

[102] Q: Could you describe what the problems are?

A: The complex detention unit, before an appointment can be set up, an inmate over there in the detention unit must send in a legal assistant request form, per the policy. Sometimes these forms take quite a long time to get to you, or the inmate won't know who—that there is a legal assistant out there that can help him.

Q: Now do you know prisoners specifically who this has happened to?

A: I know several. Inmate Carrillo is one, and recently—

MR. HOCHULI: Objection. Foundation, Your Honor, so I can hear whether this is based on hearsay or how he knows this information.

BY MS. AIYETORO:

Q: How do you know the prisoners that this has happened to?

A: I—when the problem first occurred I was down there seeing another inmate.

Q: Mmm hmm.

A: And the CSO that was on duty asked me who he gives these legal assistant requests forms to.

Q: Mmm hmm.

A: And I said what do you mean, who do you give them to? And he showed me, and it was inmate Carrillo's who was asking to see me, and that had been a week. It'd been sitting in there for a week. He didn't know that he had to bring them [103] up to the complex unit

Q: So a staff person told you that that was a problem?

A: Yes.

Q: Have you discussed this problem with any person on staff?

A: Yes, I have. I have spoken to Warden Charles L. Ryan through inmate letters, as well as Major Casey Goode.

Q: And who is Major Goode?

A: He's in charge of the complex security, including the complex detention unit.

Q: Now—and Warden Ryan is the warden of the whole facility?

A: Yes, he's the complex warden.

Q: Now has the problem been resolved?

A: No ma'am, it has not.

Q: So does that mean that when you serve as a legal assistant sometimes you get requests for assistance that are a lot later than when the person actually signed it up?

A: Yes ma'am. In fact we tried to implement a policy—

MR. HOCHULI: Objection, Your Honor. There's no question before the witness.

BY MS. AIYETORO:

Q: What did you specifically try to do to resolve the problem?

A: We had wrote a kite to Major Goode outlining a proposal that we had on listing of the legal assistants and the [104] disciplinary representatives, who these kites go to, like to the complex law library, or the CPSs were on both yards, Coronado as well as Kaibab, so the inmates over there in CDU would not only have a listing of who could help them, but who to send the kites to and who could answer their questions.

Q: And what happened to that suggestion?

A: Nothing ever happened to it.

Q: Have you—

THE COURT: So you mean that there is no policy with respect to that, that you're aware of, or procedure?

THE WITNESS: Just—as far as what sir?

THE COURT: What you just described, that nothing happened with respect to that. What—is there any procedure at all by which the—which you said you—the plan you proposed to them. Is there any procedure to take care of that?

THE WITNESS: No sir.

MS. AIYETORO: I'm sorry, Your Honor.

THE WITNESS: The one procedure that they have in place allows the inmates to come from CDU to the law library to utilize the law library, but the institution says they can't do it. They won't do it, period.

THE COURT: They won't do what?

THE WITNESS: They won't allow an inmate to come from CDU to utilize the law library.

[105] THE COURT: Who is the—who is—is that?

THE WITNESS: Warden Herman, Jack Schwartz, the CPS, Major Goode.

THE COURT: They told you that personally?

THE WITNESS: Personally.

BY MS. AIYETORO:

Q: Now do prisoners ever come to you with legal problems you feel you're unable to handle?

A: Yes ma'am.

Q: And how often does that happen?

A: Quite frequently.

Q: And why do you feel you're unable to handle them?

A: Well I'm not a lawyer. I know a little bit about the law. I'm just an inmate who learned, and is still continuing to learn about law. So there's many types of litigation that I know nothing about.

Q: What do you do in that situation?

A: Well, we hope that there's somebody else, another legal assistant that might be able to help them.

Q: Okay. Is there ever a time that you can't refer them to anybody?

A: Quite a few times.

Q: Now since you've been a legal assistant at Kaibab has there always been at least one Spanish speaking legal assistant, to your knowledge?

[106] A: No ma'am.

Q: And do you speak Spanish?

A: No ma'am.

Q: Have you ever had a client who spoke little or no English?

A: Yes ma'am. I just brought this to the deputy warden's attention two—about a month ago, excuse me. His name is inmate Quazada.

Q: Okay. And how do you handle such a client?

A: I have to get another inmate that speaks Spanish, and hope that this guy isn't on a sensitive case.

Q: How do you go about meeting with the prisoner you are attempting to assist?

A: The inmate has to request me, I cannot request him, to see him. So if I'm working on his case I have to either catch him on the yard and tell him to fill out a legal assistant request, and then we meet up in the law library.

Q: Have you ever needed to meet with a prisoner you're assisting but were unable to set up a meeting because the prisoner didn't initiate it?

A: Many times.

* * * *

[110] Q: Have you ever tried to do that?

A: Yes ma'am.

Q: And what have you attempted to do?

A: We asked the law librarian, as well as the CPS, if we—and the deputy warden, if we could have some kind of private area. Because some of the cases that we work on are sensitive in nature, so we'll—we want to pull them off to the side. You don't want to talk in front of everybody when you're dealing with a sensitive case; it could get the person killed. And usually you have to walk outside.

MS. AIYETORO: Your Honor, I have no further questions.

MR. HOCHULI: Your Honor, I just have four or five questions.

THE COURT: Okay.

CROSS EXAMINATION

BY MR. HOCHULI:

Q: Mr. Johns, one of the crimes for which you're currently serving time is fraud. Is that correct?

A: Yes sir.

MS. AIYETORO: I'm sorry, Your Honor. I was distracted.

THE COURT: One of the crimes of which he's [111] currently serving is fraud, and he answered yes.

MS. AIYETORO: Your Honor, I'd like to say that I'm sorry, I was distracted. And so I apologize to the Court and to the client. That I'd like to have the question and answer struck. The Court has ruled on several occasions that the felony cases that these prisoners have, taken

under judicial notice, that all of them have felonies. And most of them are not very nice felonies or they not—would not be in prison. So I'd like to ask that the question and answer be struck.

MR. HOCHULI: This goes to his honesty, Your Honor. We haven't asked about the other crimes, we've just—those dealing with honesty. That's—

THE COURT: As to whether his testimony can be believed you mean?

MR. HOCHULI: Yes, Your Honor.

THE COURT: And what is the nature of what you believe the conviction to be?

MR. HOCHULI: The nature was—I mean the crime was—

THE WITNESS: Fraudulent schemes and artifices.

MR. HOCHULI: I'm sorry?

THE WITNESS: Fraudulent schemes and artifices.

MS. AIYETORO: Your Honor.

THE COURT RECORDER: Excuse me.

MS. AIYETORO: I'm sorry.

[112] THE COURT RECORDER: Tip the microphone.

THE COURT: Well, a witness is—before you speak, is allowed to be asked, and this is the first time it's been put on that basis, on a crime. But there are certain limitations of time and pertinence to the matter of credibility, and matters of that kind. But it can be put in the record for the purpose of establishing whether or not—for consideration of whether the witness' testimony is credible or not.

MS. AIYETORO: And is that the only question you're going to ask—

MR. HOCHULI: Yes.

MS. AIYETORO: —about the crime?

MR. HOCHULI: Yes.

BY MR. HOCHULI:

Q: You have admitted—you know officer—I'm sorry. You know CPO Gabbert?

A: Yes.

Q: And have you admitted to CPO—you admitted to CPO Gabbert that you have on occasion prepared bogus legal papers for other inmates for whom you were legal assistant.

A: That's incorrect. I believe he took that way out of context of what we—our discussion was.

[207] Q: Did this individual indicate—

A: Yes sir.

THE COURT: I told the reporter to speak up if anything was inaudible because on some of the prior transcripts she said inaudible and I said, don't hesitate to speak up so that's why she's doing it.

MR. ADAMS: Mr. Harris—

THE COURT: Including some for me. Go ahead.

MR. ADAMS: Thank you, Your Honor.

BY MR. ADAMS:

Q: Mr. Harris, try to speak directly into the microphone.

THE COURT: Put it a little closer towards you maybe.

BY MR. ADAMS:

Q: Mr. Harris, did this individual who you saw sign this paper that you have identified as the head of education explain to you what those tests mean?

A: Yes, he did.

Q: And what did he say?

A: He went down each line here and I asked him, what's my level and everything, I say, where am I at. He say you real low, Mr. Harris. We're going to start you over at the beginning. I said, what you mean. They got me down into college into my classification. He said,

that's all wrong, no, you ain't college level. So I got it—he went and made [208] out the paperwork and showed me what everything is.

Q: Are you—Mr. Harries, are you in school now?

A: Yes, I am.

Q: Do you have reading books?

A: Yes, I do.

Q: What is the reading book you have?

A: 2000—it's a learning—2000, I don't know the other word to it, I don't know the other word about 2000, it's a head start book.

MR. ADAMS: Your Honor, I believe Mr. Harris has indicated that he's reading level of grade school.

THE COURT: Well, what has that got to do with this record? Is that what you're getting at? I mean I'll accept what he says, but I still don't know what that has to do with this record.

BY MR. ADAMS:

Q: Mr. Harris, has—did the person who signed that record indicate to you what those numbers mean, what those numbers stand for?

A: Yes, sir.

Q: What did he say those numbers stand for?

A: My level.

Q: What level, sir?

A: My education level.

MR. ADAMS: Again plaintiffs move that Plaintiff's [209] Exhibit 302 be admitted into evidence.

THE COURT: Now that I've been told it means his education level by looking at this I don't know what that means. I don't know what his level is from looking at this exhibit. I'll let it in as an offer of proof and—I mean you can make it as an offer of proof instead of provisionally being entered because at the moment I don't understand it either, and therefore it really doesn't matter which way it goes in because I'm telling you for the record I don't know what it means. And what's the purpose of it in any event?

MR. ADAMS: The purpose, Your Honor, is to indicate Mr. Harris' low reading level.

THE COURT: And to what end?

MR. ADAMS: My line of questioning goes to legal access when he was in lock down and his requests for legal assistance.

THE COURT: Oh, I see. Well, then my ruling will stand.

MR. ADAMS: And I understand the Court's ruling is that this is being admitted as an offer of proof?

THE COURT: Well, yes, because it doesn't really matter which way it goes in. I don't understand it. I mean I take your word for it that that's what you're offering it for, but in looking at it it I don't know what it means. And I don't know that—I suppose, I don't know of any other way [210] of approaching the matter to show that he has a low level of reading except I suppose to have something like this so that—I'll just leave it up for you to figure out what to do about it.

MR. ADAMS: I would request a moment with counsel, Your Honor.

THE COURT: Yeah.

BY MR. ADAMS:

Q: Mr. Harris, at what reading level did the person who signed this document indicate that you were reading at?

A: 2nd grade.

MR. ADAMS: At this moment, Your Honor, plaintiffs will withdraw this document.

THE COURT: Okay.

BY MR. ADAMS:

Q: When you were at lock down in Douglas, Mr. Harris, did you request legal assistance?

A: Yes, I did.

Q: To whom did you make this request?

A: To the counselors in the lock down.

Q: And what happened?
 A: They didn't give me none.
 Q: Did you make a request for a legal assistant?
 A: I asked request for that too.

* * * *

[215] Q: When did that occur?
 A: That occurred January this year.
 Q: And for how long were you in lock down at Perryville?
 A: 16 days.
 Q: On the day that you were transferred to lock down did you receive your medication?
 A: I can't recall.
 Q: During that 16 day period that you were in lock down did you request legal assistance?
 A: I did.
 Q: To who did you make that request?
 A: To the counselor.
 Q: What happened?
 A: He didn't give me none.
 Q: Did you request a legal assistant?
 A: I did.
 Q: And what happened?
 A: I didn't get none.
 Q: Have you attempted to use the law library at Perryville?
 A: I did.
 Q: And what has been your experience?
 A: I asked them what to do and they can't tell me what to do.
 Q: Whom did you ask?
 [216] A: The clerks.
 Q: Did you ask for a legal assistant at that time?
 A: I did.
 Q: And what was the response?
 A: I didn't get none.
 MR. STRUCK: I'm going to object to that. It's unclear as to who was asking or who he was asking and who was telling him what. He didn't specify—

MR. ADAMS: I'll—
 THE COURT: Okay. Make it—clarify if you can.

BY MR. ADAMS:

Q: Mr. Harris, when you requested legal assistance in the law library and you indicated that you requested assistance from the law clerk is that a prisoner law clerk?
 A: It was both, the head master—the librarian and the clerk.
 Q: When you asked the librarian for assistance what was the response?
 MR. STRUCK: Objection, hearsay.
 THE COURT: Do you know the name of the librarian?
 THE WITNESS: The old lady, I don't know her name, but I got—she's still working there. She's still the librarian, the head librarian up there.

* * * *

[218] MR. ADAMS: And, Your Honor, evidence will show in fact Mr. Wilbur I believe testified on this point, that the head librarian at Perryville is Starla Cathcart.

BY MR. ADAMS:

Q: What kind of legal assistance—why were you asking for legal assistance while you were in lock down at Perryville, what for?
 A: About the medical.
 Q: Okay.
 MR. ADAMS: Court's indulgence. No further questions.
 THE COURT: When you say about the medical, you mean you wanted to have someone help you do something legally to get your medication or what? What—
 THE WITNESS: Yeah, why I ain't getting my medication, is there something there that I could do.
 THE COURT: Okay.
 MR. STRUCK: Your Honor, I didn't mean to sound obstinate before but the person who is the head of the

law library at Perryville is a man named Joe Norris, it's not Starla Cathcart and—

* * * *

[270] Q: When was the most recent time?

A: 1991.

Q: And how long—were you in detention?

A: Yes ma'am. I was in the status called administrative detention, investigative lockup.

Q: And how you were you there?

A: I was there for 30 days.

Q: Okay. And during that time could you use the law library?

A: No ma'am.

Q: What access to legal materials did you have?

A: We were supposed to kite the law library for any materials that we required.

Q: And how did this system work for you, was it satisfactory?

A: No, and it—unless you know exactly the specific policy, the specific ARS statute that you want and how it pertains to your case, unless you pretty much have a law degree, it's really of no use to you.

Q: Well when you say the particular administrative regulation or the—that you want, could you ask for it by the name? Could you say I—for example, I need the administrative policy on urinalysis testing?

A: No ma'am. You had to spe—you had to cite the specific [271] number of that policy.

Q: And did you know the number of the policy that you wanted?

A: No ma'am.

Q: Was a legal representative able to come back and see you in administrative detention when you were there last summer?

A: The last time, yes, because there was a disciplinary case pending.

Q: Okay. And did one come back to see you?

A: Yes ma'am.

Q: And was that person able to get the materials for you that you needed?

A: Not for me directly. She could get them for preparation on her own if she decided to take the case, but if I was going to represent myself, no.

Q: And so did you get the materials that you needed?

A: No, I did not.

Q: Okay. If you were requesting materials through this kiting system. Is that what they called it, a kite system?

A: Yes ma'am.

Q: How many materials at once could you request? Could you request, for example, a whole book, say of the Digest, a volume of the Digest, or a—

A: From my understanding, the latest—

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[273] * * * your ability to fight your lockdown status?

A: Yes ma'am, and my disciplinary case.

Q: Okay. Why was that?

A: Because I couldn't prepare for it.

Q: Okay. Now had you ever been in lockdown before 1991?

A: Yes ma'am.

Q: And at that time could you use the law library?

A: No ma'am.

MR. STRUCK: Objection on foundation. What time are we talking about here?

BY MS. BENDHEIM:

Q: What time in 1991? I'm sorry.

A: You're talking about prior to 1991?

Q: I'm—yes, I'm sorry.

A: Okay.

Q: Prior to 1991. In 1990.

A: In August of 1990.

Q: Okay. Thank you. And that was at Santa Maria?

A: Yes ma'am.

Q: Okay. Now when there is no pending charge against you while you're in lockdown, can you get a legal assistant?

A: No ma'am.

Q: So that if you're just in investigative lockup you can't get a legal assistant?

A: No, and that was the case in 1990. * * *

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[276] Q: And that included any appeal to the Central Office?

A: The appeal, to them, was no part of the disciplinary proceeding.

Q: Okay. And did you protest this?

A: Yes ma'am, I said—yes.

Q: Okay. Now you said that you had a street attorney, Mr. Geerlof. How did you—had he represented you in your initial criminal offense?

A: I—no ma'am.

Q: Okay. And so he wasn't your "attorney of record" originally?

A: No ma'am.

Q: And—but you decided that you needed to retain an attorney?

A: I thought it would be in my best interest.

Q: And how did you find Mr. Geerlof, had you known him before?

A: No. Just other inmates had—another inmate had used him in a disciplinary proceeding. So I felt—

Q: Mmm hmm.

A: —he was aware of the system.

* * * *

[286] CROSS EXAMINATION

BY MR. STRUCK:

Q: Ms. Booker, in your direct examination you testified that during a period of time in August of 1990 you were in lockdown. Do you recall that testimony?

A: In 1990?

Q: Yes ma'am.

A: Yes.

Q: Isn't it true ma'am, that at that point in time you were able to call an attorney yourself without having to have someone else call him for you? Let me reask the question.

A: Please.

Q: Because it wasn't clear from your testimony. I couldn't tell how you were able to contact your—this Mr. Geerlof. Isn't it true that you actually were given a call, and able to call him yourself in order to initially hire him?

A: I—there's a standard procedure for making legal phone calls.

Q: Okay. Did you place that call to Mr. Geerlof?

A: Eventually.

Q: So you did?

A: Eventually.

Q: That's a yes.

A: Yes, a yes.

Q: Thank you.

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[100] THE WITNESS: Okay we're talking about putting a request in on Monday and not getting the phone call until Thursday or Friday.

THE COURT: Okay.

BY MR. ADAMS:

Q: So you're talking about a four or five day delay?

A: Right.

Q: Has it ever occurred to you that a delay has caused you any harm or prejudice to your case?

A: Yes.

Q: When did that occur?

A: That occurred in January of '91.

Q: When did you make the phone call request?

A: I made the phone call request about, I think it was about eight days before I needed to call.

Q: To whom did you make the request?

A: To my counselor, Larry Balger.

Q: Were you required to provide him a reason why you needed to make the phone call?

A: Yes.

Q: Did you give him the reason?

A: Yes.

Q: What was the reason?

A: I needed to get some issues included in a supplemental [101] brief that my attorney had a date to respond on.

Q: Was this a matter that could have been handled by the mail, the legal mail?

A: Yes.

Q: Was it a matter that could have been handled by the legal mail?

A: Oh no, not at that point.

Q: Why not?

A: Because I had just received some documents under the Freedom of Information Act that we had been waiting on for some time that I needed him to include in it. I got those documents about three or four days prior to the date that he needed to file that and I was trying to get him so I could ask him to get an extension.

Q: Did you make your counselor aware of this deadline?

A: I believe I did in the kite.

Q: Mr. Coley what was the affect of that information—did that information get into the brief? Apparently it was—

A: No.

Q: What was the impact of that on your case?

MR. STRUCK: Objection, Your Honor, that calls for speculation.

THE COURT: Well I think it depends on whether he's being asked to give a legal opinion or whether he's

being asked to give something else. I'll allow it provisionally [102] subject to a motion to strike. * * *

MR. STRUCK: Yeah and also—

THE COURT: He can't give a legal opinion—what?

MR. STRUCK: Yeah, I'll also object to foundation, I'm sorry.

THE COURT: Well what's missing?

MR. ADAMS: You had indicated—

MR. STRUCK: Well first of all whether—

THE COURT: I would do that, I find it quicker than horsing around.

MR. STRUCK: —like you said whether, you know, if he's asking for legal opinion obviously that's a foundational objection. The speculation is I don't know how this particular person can say whether or not this information in here would have helped his case or not helped his case. I mean who knows why the judge did whatever the judge did.

THE COURT: Well you're speculating and that's why I said we'll have to wait and see what he's going to say and I've already advised counsel it can't be a legal opinion. So you have no problem with this, if it comes in and it's clearly error and you make a motion to strike I'll grant it, or if it should be stricken and if not I won't grant it. Okay. And there's no jury here, just me. Go ahead.

BY MR. ADAMS:

Q: Mr. Coley why were you attempting to get this information [103] to your attorney?

A: Because I needed him to include it in his supplement that he was submitting to the court.

Q: What was the information, in general terms?

A: It was an issue that I needed to have raised by him so that at the next stage if I did not receive satisfaction it would already be included in my materials.

Q: And did your attorney receive this information?

A: No, he didn't.

MR. STRUCK: Excuse me, Your Honor, could we have the name of the attorney? This is all new information to me I never heard about until just now.

BY MR. ADAMS:

Q: And the name of the attorney Mr. Coley?

A: James D. Hunter.

Q: What is the situation with regards to the confidentiality of legal calls at Cimmarron currently?

A: I don't understand your question, confidentiality?

Q: What are the circumstances around which legal phone calls are received at Cimmarron?

THE COURT: With your lawyer?

BY MR. ADAMS:

Q: With your lawyer?

A: You, if your lawyer's in Tucson then the counselor will call his office for you. If he's in Phoenix then you have to [104] submit an inmate transfer and they'll call Phoenix for you.

Q: When you're having the phone call, through your own experience, where are you?

A: In the counselor's office.

Q: Are you alone?

A: No.

Q: Who's there with you?

A: The counselor.

Q: In your experience what counselor or counselors have been in the room while you've made a telephone call? While you've been having a telephone call with your attorney?

A: Every legal phone call I ever made the counselor was sitting in the room.

Q: Can you give me—can you identify them?

A: Yeah, Freizemeyer, Ms. Calderon, Larry Balger.

Q: How close to you is this DOC staff person sitting, approximately?

A: Probably right here (indicates) on the other side of the ledge. The phone sits on his desk and he sits behind his desk.

THE COURT: Are you indicating about an arm's length away from you?

THE WITNESS: About an arm's length away.

BY MR. ADAMS:

Q: When this has occurred have you ever made a specific [105] request for the DOC staff to leave the room?

A: Yes.

Q: What room is used?

A: The counselor's office.

Q: Can you describe that room?

A: Square room with a window in front of it.

THE COURT: A window in front of it to the outside or to the corridor?

THE WITNESS: There's—to the corridor because—

THE COURT: In other words the door that you come in and out of there's a window there?

THE WITNESS: Yeah.

THE COURT: Okay.

BY MR. ADAMS:

Q: Have you ever stood outside this room?

A: Yes.

Q: When you've had an opportunity to stand outside the room can you see inside the room.

A: Yes.

MR. ADAMS: A moment with counsel.

(Pause).

BY MR. ADAMS:

Q: Mr. Coley you indicated that you had made requests of a DOC staff person to leave the room. When you've done that what has been the staff person's response?

[106] A: Mr. Freizemeyer told me the DOC policy does not allow him to leave the room when I'm talking on the telephone.

Q: Has there ever been any other response, type of response, and if so from whom?

A: Yes Ms. Calderon told me one time no, she wasn't leaving the room, inmates can't be in there using the phone without a staff present.

MR. ADAMS: No further questions.

CROSS EXAMINATION

BY MR. STRUCK:

Q: Could you tell me sir when this incident took place where you're—what time period you're talking about where this incident took place where you weren't able to get a phone call to your attorney and so to tell him about these materials you wanted included in this brief?

A: Yes that was in January of '91. This past January.

Q: Now it was my understanding that you made the request to contact your attorney eight days before you needed to call him. Is that what you told us?

A: Yes.

Q: So at—when you made the request at that time did you have the materials that you were talking about?

A: No, I didn't.

Q: How did you know that you were going to need to contact him on that day?

[107] A: I had written him and told him that I was expecting materials from ATF pertaining to the case, under the Freedom of Information Act, and that they had sent me a letter telling me that they would respond in 20 days. Okay. I did not know at that point that the mail was coming in, but I put in the phone call request ahead of time in case it didn't I could get a hold of him anyway.

Q: Did you also ask your attorney in that correspondence to request a meeting with you or a phone call with you?

A: No I didn't.

Q: I believe you also testified sir that

THE COURT: Can I ask a question about that? If you did make a request to have them, as I understand it, the prison people, to get in touch with your attorney to call you, is that allowed? Is that part of the procedure?

THE WITNESS: I'm not sure of that Judge.

THE COURT: Have you ever done that?

THE WITNESS: Yes.

THE COURT: I mean have you asked them to get you—

THE WITNESS: I have asked him to call my attorney to set up a time where we could get together since—

THE COURT: Well has that happened?

THE WITNESS: No.

BY MR. STRUCK:

[108] Q: I believe you testified sir that when you make this request for a phone call you have to tell your counselor exactly why you want to make the call. Isn't that what you testified to?

A: Right.

Q: Isn't it true that when you request a call from your counselor that you don't have to tell them the nature of the call?

A: I beg your pardon?

Q: I said isn't it true that when you request a phone call you don't have to tell your counselor the nature of the call?

A: No.

Q: Okay.

THE COURT: Are you talking now because there's a policy that you believe establishes that?

MR. STRUCK: This is impeachment, Your Honor. Counsel refer to page 33 of Mr. Coley's deposition. Line 19 of page 33 of Melvin Coley's deposition taken December 10th, 1990.

"Q: When you request a phone call, you have to say what the nature of the phone call is. In other

words do you have to say you have a court hearing in a week or I've got a motion due in a week so I need to call. Anything like that?

"A: No.

[109] Do you remember giving that, those questions and giving that answer in your deposition?

A: Sure do.

(Pause)

MR. STRUCK: I have nothing further.

MS. AIYETORO: One moment, Your Honor.

REDIRECT EXAMINATION

BY MR. ADAMS:

Q: Mr. Coley can you explain the difference in your two statements, one at your deposition when you indicated that you did not have to tell what the nature of the call was for and your statement on the stand today?

A: Yes. The difference is he asked if you had to tell him that you had a, I believe he asked if I had to tell him if I had a court date pending or something else in there and I told him no. You don't have to tell him that. What he wants to know is why do you want to call and talk to the attorney.

MR. ADAMS: I'd like to call the Court's attention to plaintiff's Exhibit marked 207, marked for identification, in fact I believe it was admitted, but my recollection is unclear.

MS. AIYETORO: It hasn't been.

MR. ADAMS: It hasn't been.

MS. AIYETORO: It has been admitted?

THE CLERK: Yes.

* * * *

[113] Q: When you came there was there anybody filling the position of resource clerk?

A: No nothing existed.

Q: Did you receive any training from the Arizona Department of Corrections to do that job?

A: No I did not.

Q: Now I want to make it clear for the record, you were resource clerk and did you have to reapply to become the law library clerk?

A: No.

Q: They just changed your title when the law library was established?

A: Yes.

Q: And you received no training from the Department of Corrections?

A: No.

Q: Have you received any training at all?

A: Yes I have.

Q: And what training is that?

A: I have a paralegal degree.

Q: Okay and when did you get that degree?

A: December 1989.

Q: And where did you get it?

A: From International Correspondence School.

THE COURT: This was while you were in prison?
[114] THE WITNESS: Yes sir.

BY MS. AIYETORO:

Q: Now this was a correspondence course, did the Arizona Department of Corrections recommend that you take the course?

A: No.

Q: Did they pay for the course?

A: No.

Q: What are your responsibilities as the law clerk?

A: I'm to assist people in locating materials and legal text that they may need to research, to provide them with forms that they may need for various legal reasons.

Q: Now is there more than one law clerk at the Florence Women's Unit?

A: Yes.

Q: And who is the other law clerk?

A: Her name is Sandra Ramos.

Q: And when was she hired?

A: Around the end of October of this year.

Q: Were you responsible at all for any training of her?

A: Yes.

Q: What type of training?

A: To assist her in the basic routine, to familiarize her with the legal materials that were available in the law library such as the forms, the textbooks.

Q: Was she familiar at all with the books before?

[115] A: Somewhat.

Q: Did—when you were assisting her did you recognize that she had certain skills in terms of law library research?

A: She could articulate very well, she was fairly intelligent so it was easy for her to catch on.

Q: So you were having to teach her basic things about the books?

A: Yes.

Q: Does she speak a language other than English?

A: Yes she is bilingual.

Q: Now have you always had a bilingual co-lawclerk?

A: No.

Q: Are there women in the yard who speak very little English?

A: Yes.

Q: And prior to the bilingual law clerk that you just talked about how would you help them?

A: Usually I would have them bring someone with them that could interpret for them.

Q: And did you ever have problems with this?

A: Yes.

Q: And what were the problems?

A: One of the problems was is that they would bring a different person with them and I would have to re-explain the whole thing. The person that was interpreting wasn't [116] familiar with the terminology I was using

or the legal part and they would have difficulty interpreting it to the person, the Spanish speaking person that came for the assistance.

Q: So that the other language primarily is Spanish?

A: Yes.

Q: Are you familiar with what is called the Muecke list?

A: Yes I am.

Q: And does the law library at Florence Women's have all the books required by that list?

A: Yes.

Q: And are they current?

A: Yes.

Q: When did this occur?

A: In May of 1990.

Q: Do you have a need for any books that are not on the Muecke list?

A: Yes.

Q: And what books are those?

A: We have, we need materials that are Spanish/English, we need materials that are self help books as far as—can I explain this?

Q: Sure.

A: Okay. A lot of complaints that inmates in the unit that I reside in would be—

* * * *

[119] BY MS. AIYETORO:

Q: Okay, so is there any other issue? You mentioned that you had a lot of Spanish speaking prisoners, is there an issue that comes out of that as well?

A: We have a lot of immigrants and they have, while they're incarcerated on a felony conviction, this is the females that I've experienced, they are being served with detainers for deportation hearings. We have no information whatsoever, I have not been able to gain access to any information dealing with deportation hearings, the defendant's rights, their appeals rights, the process, if they

have the right to have a hearing right away. We have no information on that and I haven't been able to gain any information.

Q: Now do you need the Pacific 2nd?

A: Yes.

Q: Is it, do you have it currently in the library?

A: Yes.

Q: But that's not on the Muecke list, to my knowledge?

A: Correct.

Q: Now why is it that you need the Pacific 2nd?

A: One of the reasons is, is there are a lot of cases dealing with surrounding—localize that area, California, [120] New Mexico, States to that effect with issues on it. Also, you have inmates that are Arizona, but they also have criminal charges in another State—

Q: Mmm hmm.

A: —that they're litigating at the same time. And it's hard to gain access to that material.

Q: Now have you ever had books that you had—or do you know of any books—strike that. Have you ever had books taken or know about books being taken from a law library because they weren't required by the Muecke list?

A: Yes.

Q: What is a legal assistant?

A: A legal assistant is an inmate approved by the warden to help other inmates, to assist other inmates in preparing briefs, motions, documents to the courts and to assist them in administrative hearings.

Q: Are you a legal assistant?

A: Yes.

Q: How did you become a legal assistant?

A: I submitted an inmate letter to the deputy warden.

Q: And did you have to provide or I'm sorry, did the ADC provide you with any training to be a legal assistant?

A: No.

Q: What are the differences between a legal assistant and a law clerk?

[121] A: A law clerk, an inmate law clerk receives WIPP, which is a pay program through the prison and they are to provide inmates only with assistance to books to help them research. An inmate assistant is not provided any monies through the state. They must work on—they must provide the assistance free on their non hours, their non work hours and they assist inmates in preparing their briefs or legal assistance.

THE COURT: How you get chosen to be a law clerk? Do you know?

THE WITNESS: How did I get chosen?

THE COURT: No, you are a law clerk then?

THE WITNESS: Yes.

THE COURT: Oh I thought you were a legal assistant.

MS. AIYETORO: She's both, Your Honor.

THE COURT: Both, I see.

MS. AIYETORO: The earlier testimony—do you want her to tell the Court again how you were chosen as the law clerk there?

THE COURT: No, I heard that.

MS. AIYETORO: Oh, okay.

THE COURT: She put in an application, she was approved, but I thought—anyway it's clarified.

MS. AIYETORO: Okay.

* * * *

[123] Q Do you know how many approved legal assistants are in the Florence Women's Unit?

A: I only know of myself.

Q: And in the past has there been a list of legal assistants maintained in the law library?

A: Yes.

Q: Is that list still maintained there?

A: No.

Q: And when did that happen?

A: Probably about four or five months ago.

Q: What is a disciplinary representative?

A: A disciplinary representative?

Q: Is there such a thing as a disciplinary representative?

A: Before the policy, before 30211, which is inmate access to legal assistance, years ago there was a thing called an inmate rep and an inmate rep would just rep someone in a disciplinary hearing and they didn't have to be approved because the rules of discipline state that a staff member, an attorney or a willing inmate can represent you in a disciplinary hearing. So that's kind of where that comes from. But it's not an inmate legal assistant.

Q: Okay.

A: And they don't use the terminology technically anymore.

Q: Okay. So that technically there is no such thing now as [124] an approved disciplinary representative, they're either inmate legal assistant or a law clerk or you can just do it on your own?

A: Right.

THE COURT: Is this what they used to call a jail-house lawyer?

THE WITNESS: Yes.

THE COURT: All right.

BY MS. AIYETORO:

Q: Approximately how many women request your services as a legal assistant on a weekly basis?

A: I would say an average of 15.

Q: Are you able to help all the women who ask for your assistance?

A: No.

Q: Why not?

A: I just don't have the time. I just, I have my work, I have people, I have that, I have programs, I have—I just don't have the time.

THE COURT: Have you ever requested or discussed with anyone whose name you can give us that you allow

your work to be that of legal clerk and legal assistant and not—and have that in addition to some other kind of work?

THE WITNESS: I—

* * * *

[128] Q: Now you indicated you weren't able to help all women because your, of your time restraints. Are there any other reasons why you may find it difficult to help some women? Have you had any problems in other ways?

A: Another reason is the Spanish speaking, I do not speak Spanish.

Q: Mmm hmm.

THE COURT: I meant to ask you about that. You said in the library that you need Spanish/English materials, what did you mean by that?

THE WITNESS: I mean Spanish/English text, legal dictionaries.

THE COURT: All right.

THE WITNESS: Rules of discipline, basics to where a Spanish speaking individual could come and they could sit down and they could understand what they're reading.

THE COURT: You mean the regulations issued by the prison with respect to disciplinary matters, which is what you deal with to representing—

THE WITNESS: Correct.

THE COURT: —them in those disciplinary actions,

THE WITNESS: Correct.

THE COURT: —are not in Spanish, just English?

THE WITNESS: Just English.

[129] THE COURT: Okay.

MS. AIYETORO: Okay.

BY MS. AIYETORO:

Q: Have you ever had a problem because you felt you didn't have sufficient training or knowledge?

A: Yes.

Q: Could you describe that?

A: I am—there's an inmate that I have tried to assist in doing a federal writ. She has a viable claim I just am not competent enough to help her complete that writ. Also there have been incidences dealing with defendants and their attorneys filing Anders briefs and they would come to me to help them file supplemental pleadings for their opening brief and there are many times that I just am not knowledgeable enough to help them complete it.

THE COURT: What kind of briefs?

THE WITNESS: An Anders brief.

BY MS. AIYETORO:

Q: What is an Anders brief?

A: An Anders brief, it came from I think state of California v. Anders, where an attorney filed an opening brief and requested that the Court of Appeals research the case for fundamental error based on the fact that counsel was unable to find any claims to raise on appeal. So they requested that the Court of Appeals review for fundamental errors.

[130] Q: Okay. Do you provide legal assistance or law clerk services to prisoners in segregation?

A: Yes.

Q: And what services do you provide?

A: Besides—

Q: What do you do? I mean if a person is in segregation what kinds of services can you provide that person?

A: I can provide them material if they request material from law library. Also if they have disciplinary pending or they have outside street court cases pending they can put in a kite to request to see me to discuss it with me.

THE COURT: Are you allowed to do the research for them and find the books that are pertinent to the questions that involve the particular litigation or do they have to be specific and say what it is they want before they can be given a book for withdrawal?

There's been testimony in other words that in some phases of the institution, I've forgotten exactly where, at

different times, that the inmates couldn't get books because they had to make a specific request for a specific book and they didn't know what to ask for because they didn't know what to ask for?

THE WITNESS: Right.

* * * *

[133] THE WITNESS: That's one that I can remember, you know—

THE COURT: Okay.

THE WITNESS: —right off.

THE COURT: Go ahead.

DIRECT EXAMINATION (Resumed)

BY MS. AIYETORO:

Q: Do you ever have, well you've already answered this, the Judge asked it so, are there prisoners who want legal assistance from you who have difficulty reading or writing?

A: Yes.

Q: How often per week, if you can do it on that basis, do you encounter a person who wants your assistance but has difficulty reading and writing?

A: I would say on an average about two.

Q: Can prisoners browse the shelves at the Florence Women's Unit?

A: Yes.

Q: Have you had problems with material being stolen or pages being torn out of books?

A: No.

Q: Have you ever had the need to see a medical person while incarcerated?

A: Yes.

* * * *

[158] Now one of the problems I had in the Gluth case is that I didn't have any recommendations from the prison authorities because they played the game of craps and decided they were going to put all of their defense on one

proposal, and that is that I didn't have jurisdiction. But we did persuade them to get together and they did agree on a lot of things, in spite of that. So, therefore, and a lot of the recommendations came from the special master.

So there wasn't—it wasn't too difficult to figure out something that would be likely not to cause too much of a conflict based on the record and everything, and I felt that it was important that the prison authorities play a part in it since I would like to be realistic about it and not live in a fantasy world and have the input of whatever—given whatever I might find, no matter how wrong it is, that at least it's something you believe you will be able to work with. That doesn't mean that I necessarily have to accept it but I want to be able to get such suggestions from the defendants if we get to that point, and I tell you that at this point so you can be thinking about it and not because again, I've made up my mind.

* * * *

[164] And then in the Gluth case when it wasn't done, I hired a special master to try to advise the Court as an expert—and he was accepted as an expert—as to what the Court ought to do after holding additional hearings himself in the areas covered by the lawsuit and making findings which were not challenged, I might add. And so that's how that came about.

So it's a little bit different than the general things that go around, and I won't go into any more specifics on that as to what actually happened. And I don't know if counsel is aware of that or not. You've probably been told that I'm an ogre and I'm stubborn and I only want my way. And I don't know it's ever been raised before that I've been told that before, but we've had clashes here and there's rumors to that effect in the Gazette that I'm crazy and all that sort of thing. That was about the Gluth case and I was sustained in every particular.

And I'm perfectly agreeable to having counsel tell me what I've just said in terms of what will actually work and what won't work, and even to propose if need be the

regulations that are now in effect, provided, you know, they are kept in effect if they meet some of the problems that plaintiffs have with the facts of this case.

* * * *

JANUARY 7, 1992

* * * *

[74] THE WITNESS: I'm the correctional educational program manager at Perryville.

BY MR. STRUCK:

Q: And how long have you had that position?

A: I'm starting my 12th year.

Q: What are your duties as correctional programs manager?

A: At the present time I'm responsible for all programs such as E.S.L., English as a Second Language, A.B.E. which is Adult Basic Ed for inmates who have not completed the 8th grade, G.E.D. recreation. I'm also supervising the librarians.

(Change of Tape)

THE COURT: Okay. If I can hear it everybody can.

BY MR. STRUCK:

Q: I'm just going to talk today specifically about your duties supervising the librarians. Okay? Could you tell us what past experience you had or your past educational background?

A: Okay. I have a bachelor's degree from Boston University. I have a master's degree from Boston University. I have a doctorate from A.S.U. I have been an elementary school teacher, an elementary principal. I've been a supervisor and [75] director of schools for American Samoa. I've been a grad assistant at A.S.U. and been an assistant superintendent in Peoria, Arizona and my present position at Department of Corrections, Perryville.

Q: As far as supervising the librarians, what does that entail?

A: I am responsible for—I was. Right now I'm responsible for the supervision of two librarians in the general collection and I supervise one librarian who is responsible for the law libraries.

Q: You said something about was. Have your duties changed?

A: Yes. In August of this year I—up until August of this year I was responsible for the law library at the complex level. With the new procedure that we have, the law libraries are down in the units. The law librarian still assists in the law libraries but the direct supervision of the law library itself is in the deputy warden's hands.

Q: Prior to August was there only one law library at Perryville?

A: Yes, that was located at the complex level. It was called the Complex Law Library.

Q: At some period of time other law libraries have opened at the units. Is that right, other law libraries have opened at the various units within Perryville since that time?

A: It started in January of last year. * * *

* * *

[77] * * * And that was made by A.C.I. and that took a while to be made also. But I designed it, purchased all the typewriters and tables and chairs for the unit libraries. Once that was completed the deputy wardens were responsible.

Q: Does the—do the unit law libraries contain only the materials on the Muecke list?

A: No. There's other materials but I'm not as familiar as a law librarian would be, but we duplicated a lot of forms that are needed by the inmates. And they're kept in a filing cabinet. From what I've been told we have excess material in the unit libraries. What is left over is still contained in the complex library, because we didn't have enough room or enough copies of material that was not on the Muecke list. We might have only one

set of something and that was still housed at the complex library but could be brought down to the unit library at any time.

Q: You said that you were in charge of purchasing copy machines?

A: Mmm hmm.

Q: Do all of the unit law libraries have copy machines?

A: Yes, they do. They have four brand new ones we purchased.

Q: Are there also typewriters available?

A: Yes there are. I purchased between 15 and 20 typewriters, IBM electric typewriters. They do not have [78] manuals any longer.

THE COURT: You're now only referring to Perryville?

THE WITNESS: Yes sir.

THE COURT: Well, I meant—right.

MR. STRUCK: Mr. Morse is only going to be testifying about the situation at Perryville.

BY MR. STRUCK:

Q: The 15 to 20 electric typewriters that you purchased, those are available for inmate use?

A: Strictly inmates, yes. They're placed in the library and we keep a reserve in the warehouse when one breaks, we can, you know, switch them so they're always available.

Q: Are there notary publics available at the unit law library?

A: At each unit and at the complex level, myself and the law librarian are available at any time to go to the unit but the units also have notary publics. AA's are—that's the administrative assistant to the deputy wardens are all notary publics.

Q: Is this a service that's provided the inmates free of charge?

A: Oh definitely. All services that we provide with the exception of copying is free of charge.

MR. STRUCK: I have nothing further. Thank you.

[79] MS. BENDHEIM: I have no questions.

MR. STRUCK: May this witness be excused?

THE COURT: Yes, you're excused. Thank you.

THE WITNESS: Thank you.

(Pause)

THE COURT: Are you getting, who, Starla Cathcart now?

MR. STRUCK: Yes.

(Pause)

STARLA CATHCART, DEFENDANT'S
WITNESS, SWORN

DIRECT EXAMINATION

BY MR. STRUCK:

Q: Morning.

A: Morning.

Q: Could you state your name for the record?

A: Starla Cathcart.

Q: And what is your occupation?

A: I'm the law librarian at Perryville.

Q: How long have you been the law librarian at Perryville?

A: A little over five years.

Q: What did you do before that?

A: I was a librarian at the city/county Safford City Graham County library.

Q: For how long?

A: About 14 years.

[80] Q: Do you have any other library experience other than what you've mentioned today?

A: I was a school librarian two different years, two different schools.

Q: So two years total you were a school librarian?

A: Hmm?

Q: For two years total you were a school librarian?

A: Yes.

Q: What schools were you a school librarian for?

A: The first time was up in Utah, half day of Draverton Junior High and a half day at Sunnyside High School. And the second time it was at San Manuel High School in Arizona.

Q: What's your highest level of formal education?

A: I have a master of library science.

Q: From where?

A: Brigham Young University.

Q: During the five years that you've worked for the Department of Corrections at Perryville as a librarian have you attended any seminars on law libraries?

A: I've attended one at Glendale Public Library that was sponsored by the Phoenix area Association of Law Libraries.

Q: And how long was that seminar?

A: Pardon?

Q: How long was the seminar?

A: How long was it?

* * * *

[82] week or three times—it depends on what the need is.

Q: Okay. What kind of—

A: I go to at least one of them every day and usually two or three, sometimes all four of them.

Q: What type of assistance do you provide the unit law librarians?

A: Consolation—

Q: Consultation?

A: Consultation. I can't get the T in there. I give them supplies take up—pick up requests. If they need things that they don't have down at the unit libraries, I pick up the requests and take them back with me and I fill what I can from the law library and what I can't fill then I try to get through other sources.

Q: Do you have—do your duties include responding to inmate requests for law materials from the complex detention unit?

A: Yes. I get requests from the detention unit. Usually they're given to their CPO or else an officer and they send it to me.

THE COURT: Are we talking about requests from prisoners now or staff?

MR. STRUCK: From prisoners. I'll go in—

THE COURT: What kind of requests do you get from prisoners?

THE WITNESS: Usually they want a specific case or [83] information on a subject, and I try to give, you know, to them what they ask for.

THE COURT: Do they ever ask you—

THE WITNESS: And if I don't—

THE COURT: —to advise them on where they can find what they need or something? Or can they?

THE WITNESS: You mean—

THE COURT: In other words if they—

THE WITNESS: —other places to go—

THE COURT: —have to ask for a specific book or a specific article or something like that?

THE WITNESS: I take subject requests.

MR. STRUCK: I'll just go into that area now.

DIRECT EXAMINATION (Resumed)

BY MR. STRUCK:

Q: The inmates at CDU, how quickly is the time between when they make the request and when you actually get the request?

A: Well, I can't say about when they make it and when I get it because—

Q: Okay.

A: —that varies, depending on who they give it to and when they give it to them.

Q: Can you generally tell us—

A: But when it comes to me then I usually fill it, if it's, you know, like say if I get it in the morning I try to fill [84] it by afternoon. If I get it in the evening then I try to get it to them by the next day.

Q: And as the Judge was talking before about the request itself, the inmate—if it doesn't have to make an exact—exactly specify what book they need, do they?

A: They don't have to.

Q: They can if they want?

A: They can, yeah. It's helpful if they do. But if I don't know what they want exactly, too, I go down and see them and question them and try to find out exactly what it is they need, what kind of information, and then I try to get it to them.

Q: So if you get a request that you don't—you can't really tell what it is they want, you'll actually go down and talk to the inmate to find out what it is they want?

A: Right.

QUESTIONS BY THE COURT

BY THE COURT:

Q: Are you able to deal with all of the requests you get?

A: So far. I haven't had a lot of them. And now, you know, a lot of times they ask for legal assistants so I pass that on to the units where that's taken care of.

Q: Then they do get assistance on their legal needs from other persons?

A: From inmate legal assistants. They can request to see a [85] legal assistant.

Q: What kind of legal assistant are we talking about? A jail house lawyer?

A: Right.

Q: And how about the librarians that work in the libraries, do they get assistance from them also?

A: The librarians in the units, the library officers, they take care of the lockdowns on their own units. Occasionally they may end up taking care of the ones at

CDU, but usually they take care of the ones in their units.

Q: Well, do they also take care of, in a similar fashion as you do, the requests of the inmates of what they want? You just described what you—the requests you get and how you take care of them. Do they do the same thing?

A: Pretty much.

Q: Mmm hmm. Why do some of their requests come to you instead of to the unit?

A: Well, the ones in the CDU, they're not in a unit, they're out in an area by themselves, although they have inmates from each of the units there, each of the three men's units.

Q: You mean you're explaining to me that the reason they come to you instead of going to the others is that there is no unit contact person with the CDU?

A: Right. They're not in the unit. And also it's harder for the library officers to get to the CDU to take care of [86] them.

Q: And so largely all—completely or largely the requests you deal are from the CDU unit?

A: For the lockdowns, yes.

DIRECT EXAMINATION

(Resumed)

BY MR. STRUCK:

Q: When an inmate at CDU requests materials, how many books can they have for a 24 hour period?

A: I've been taking over whatever it requires to fill their request of two to three, four books, one book, whatever it takes.

Q: And I think you just described to us the CDU is actually physically closer to you, and that's why it's more convenient for you to handle the lockdown requests. Is that right?

A: Right. And it's easier for me to get away to go talk to them.

THE COURT: Well, I understood that—

THE WITNESS: And delivered.

THE COURT: —you were doing that because they're in lockdown.

THE WITNESS: Well, they are in lockdown.

THE COURT: Well, isn't that the reason you actually take care of their requests?

THE WITNESS: No.

THE COURT: Because they can't come to the library.

[87] THE WITNESS: Right. They can't go to the library.

THE COURT: Yeah.

DIRECT EXAMINATION

(Resumed)

BY MR. STRUCK:

Q: There is a lockdown unit at San Juan. Is that right?

A: Yeah, there is a lockdown pod.

Q: Okay. Those inmates actually have physical access to the law library though there though, don't they?

A: To some degree, yes. They do have a time slot when they can sign up by kite.

Q: And they actually take them down to the law library?

A: Yes.

Q: Can you tell us what the law library hours are at the San Juan unit?

A: At San Juan they're open at one o'clock and close at nine o'clock, and they don't close at any other time.

Q: How many days a week?

A: Five, Monday through Friday.

Q: Are they ever open on the weekend?

A: I don't know if they have or not. The provision is there that if anybody needs it, it will be open for them. They'll get a clerk in there to be with them.

Q: So if someone—

A: And an officer.

Q: So if someone needs additional time to get in the law [88] library it will open up outside of the regular hours?

A: Yes.

THE COURT: Is there written policy covering all the things—most of the things you've been testifying to, about?

THE WITNESS: I think there is.

THE COURT: You don't know?

THE WITNESS: It would be a unit policy rather than the complex.

THE COURT: Well, are your duties—I know your job description is probably described, but as to what you actually do, is that also described specifically with respect to the inmates?

THE WITNESS: My job?

THE COURT: Yeah. In writing—well, I know you probably have a job description. But as to the things you've been talking about, is there any written description of what you do or what you're suppose to do?

THE WITNESS: Not totally.

DIRECT EXAMINATION

(Resumed)

BY MR. STRUCK: What about the San Pedro unit, what are the hours there?

MR. ADAMS: Your Honor, I have an objection. We have already stipulated to the law library hours at the unit libraries at Perryville.

* * * *

[90] MR. ADAMS: Again, Your Honor, I'm objecting only because—interests of time we've already stipulated to the staffing of the law libraries.

MR. STRUCK: I'm sorry, I didn't see that in there. Oh, it's in a different section? I'm sorry. It will prob-

ably be quicker for her to say them for me to try and find it. It won't take long.

THE COURT: Yeah. If he asks a question and you know it's in there just tell him and I'm sure we'll have no problem.

MR. STRUCK: I didn't see it in there. I don't know if it's the same as what I've been told.

BY MR. STRUCK:

Q: Is there a librarian at each unit law library?

A: A law officer, library officer. Yes.

Q: Library officer.

A: At least one.

Q: And these are the individuals that you—you don't supervise them but you give them assistance?

A: Right.

Q: And there's at least two law clerks at each unit law library. Is that right?

A: At least two.

* * * *

[94] describe for me the types of things you ask these law clerks?

A: Well, I ask questions like what is a citation, what is a citator. I have a question about the corpus juris secundum as to what that is. I make a list of citations and ask them to write out what each part stands for, like the page or the volume, the title and the page.

Q: And what's the purpose for doing this?

A: To test their knowledge of the books to see if they are familiar and know, you know, something about the law library and how to—

Q: Could you describe for us what a law clerk's duties are?

A: They get the books for the inmates as they ask for them. If the inmate doesn't know what book he wants then they talk to them and find out what kind of book they need and what they should look into.

Q: Okay. This is—these are inmates that are at the unit law libraries that are requesting help that you're referring to?

A: Yes.

Q: And those inmates do not have access to the stacks. Is that right?

A: No.

Q: When it was just the Complex Law Library did the inmates have access to the stacks?

[95] A: Yes.

Q: And why was that changed?

A: We had a lot of books that had pages that were cut out and some books were—come up missing.

MR. STRUCK: May I approach the witness please?

THE COURT: Pardon me?

MR. STRUCK: May I approach the witness?

THE COURT: Yes.

BY MR. STRUCK:

Q: I'm going to be handing you what's been marked as Defendant's Exhibit 834. Could you describe that exhibit for us please?

A: Okay. This is a list of missing pages I had found as—well, as the inmates found they they would come up and tell me and I made a list of the ones that were missing, the pages.

Q: And this was pages missing from books in the Complex Law Library?

A: Right.

Q: Do you know approximately when you made or prepared Exhibit 834?

A: It looks like the left hand column's missing here. I made it as I found them, as they were found.

THE COURT: When did you complete making it?

THE WITNESS: When we—

[96] THE COURT: The one that's in front of you.

THE WITNESS: Yeah.

THE COURT: When was the last entry made?

THE WITNESS: The dates aren't on here so I—

THE COURT: Approximately.

THE WITNESS: When we—well when we closed the complex library.

DIRECT EXAMINATION

(Resumed)

BY MR. STRUCK:

Q: And when was that?

A: When we moved things down to San Pedro's library.

Q: Do you know approximately when that was?

A: Probably June or July. I'm not quite sure, I don't remember.

Q: Of 1991?

A: Of—yeah.

Q: Okay.

MR. STRUCK: Your Honor, at this time I move for the admission of Defendant's Exhibit 834.

MR. ADAMS: No objection, Your Honor.

THE COURT: All right. May be admitted. Did you find it, Becky?

* * * *

[98] BY MR. STRUCK:

Q: Do the unit law libraries contain the 1991 edition of the prisoner self help litigation manual?

A: The supplement, yes.

Q: And that's all the unit law libraries?

A: Yes

Q: Are Pacific Seconds available to inmates at Perryville?

A: We have most of them up at complex. We have some in the middle, but we don't have—if they ask for ones then I usually get photocopies through A.S.U.

Q: Okay. So you have most of the Pacific Seconds, there's just a few that you don't have?

A: Yeah. Part of the 300's, the 400's and 500,'s and a few of the six.

Q: And if someone requests a case from those particular volumes you will contact A.S.U. law library for copies?

A: Yes.

Q: At the various law libraries, the unit law libraries, how do general population inmates get to the law library?

A: Most of them, if they—in the three men's units, if they want to go to the library they just get a pass and go to the law library. They don't have to sign up ahead of time.

Q: So they're open yards?

A: They're open yard.

* * * *

[101] DIRECT EXAMINATION

(Resumed)

BY MR. STRUCK:

Q: Before the break, Ms. Cathcart, we were talking about materials that were included in the various law libraries. Was there some material that you obtained after the attorneys went out and were working on the stipulated facts that we discussed?

A: I believe we got the Arizona form books in since then, the first two volumes which civil, the Fourth Volume which is the domestic relations and the Seventh Volume which is the criminal, and we put one copy of each of those in the units.

A: Okay. So each unit has a copy of those?

A: Right.

Q: Additionally, at the complex library isn't there additional self help manuals as well as the prisoner self help litigation manual?

A: The inmates have put together different notebooks with information in them on different subjects to help the other inmates.

Q: Does the complex law library contain the Prisoners' Rights book?

A: Yes.

Q: And does it contain a book by West on search and seizure?

A: Yes.

Q: And do you also have a book at the complex library on [102] civil actions against the United States?

A: Yes.

Q: And you also have a book there on civil actions against a state?

A: Yes.

Q: And those are all available to the unit law libraries?

A: Yes.

Q: If an inmate at a unit law library wanted to look at an inventory would that be possible, an inventory list?

A: Of their own units, yes.

Q: All they have to do is request it?

A: Yes.

Q: How are legal copies made at Perryville?

A: Generally the inmate comes in with their stuff to be copied and they—the copying is done right there. They either have or make out a money transfer then and the copy is done right then.

Q: If an inmate is indigent he doesn't have to pay for his copies?

A: No, if it's stuff going to court.

Q: And so in other words an inmate wouldn't take in some legal materials to be copied and leave them and then have to come back a day or so later, they're done right then?

A: Right. They don't have to. They may do it on their own choice.

[103] Q: Okay. But they can—they have the option of standing right there and watching the copies actually being made?

A: Yes.

Q: Are notary services available to inmates at Perryville?

A: Yes.

Q: Is there a notary at every—

A: In Santa Maria both officers are notaries. San Juan and Santa Cruz officers are both notaries. I'm a notary. And then there's also various notaries at each yard, CPOs and so on.

Q: I think Mr. Morse testified previously today that he's also a notary.

A: Yes.

Q: Earlier in this case there was an inmate named Joe Harris who testified that he talked to an elderly head librarian at Perryville. He couldn't say what her name was, but we assume that it was you. Are there any other elderly—I'm not saying you're elderly, but elderly looking is I think how he described the person that he spoke with, librarians at Perryville?

A: You say this was at San Pedro?

Q: Yes.

A: No.

Q: Do you know Joe Harris?

A: No, I don't know who he is.

[104] Q: He's an African American probably late 40s', early 50's with greying hair. Does that ring a bell for you?

A: I don't place him. You know, I don't have a face to go with his name.

Q: Okay. If an inmate came up to you and asked for legal assistance or to talk to a legal assistant what would you do?

MR. ADAMS: Objection, Your Honor. This is speculative.

THE COURT: Pardon me? I can't hear you.

MR. ADAMS: Objection, Your Honor. This is speculative.

MR. STRUCK: It's a hypothetical, Your Honor.

THE COURT: Well he's just asking what procedures she follows. I don't see anything wrong with that.

BY MR. STRUCK:

Q: Generally if an inmate comes up and asks to speak to a legal assistant or ask for legal assistance, what do you do?

A: Well, if they come in and ask for help, if they want a legal assistant, then we try to give—you know, tell them which inmates are—show them how they—tell them how they can find out which inmates are approved legal assistants.

Q: Do you know who the approved legal assistants are in San Pedro?

A: Well, I know one of them is one of the law clerks, and the other ones are posted on the bulletin board. I don't know who they are specifically.

[105] Q: Within the last month or so has there been any incident where someone matching the description I just gave you of Mr. Harris came in to talk to you?

A: Yes. Before I went on vacation earlier last month.

Q: And could you tell us what happened?

A: Well, the guy came in and he ignored the library clerks, came right up to me and asked me or told me he needed help on his medical lawsuit that he had. And so I started asking him, you know, what he had done, if he had looked at various books. And when he said he had already done all that, says, what I need is help in writing up my paper.

And so I told him, I said what you need is a legal assistant. I told him that my—the law clerk that was there was a legal assistant and the others were posted on the board and he didn't—he kind of glanced in the direction of the board but he didn't go over there. And then he just kind of shrugged his shoulders and walked towards the door and it sounded like he said something about knowing he wouldn't get any help and went out the door.

Q: And that was the last you saw of him?

A: That's all—yeah.

MR. STRUCK: I have nothing further.

CROSS EXAMINATION

* * * *

[107] MR. STRUCK: I'm going to object, Your Honor. Is he referring to Perryville?

MR. ADAMS: I'm referring to Perryville. That's correct.

THE WITNESS: Do they give them any training, DOC?

BY MR. ADAMS:

Q: Yes, training in law library science or legal research.

A: No.

Q: And isn't it true that these CSOs who will be handling or running the unit law libraries will have responsibility for training the law clerks or supervising the law clerks who are there?

A: They supervise them. Yes.

Q: And isn't it true that the law clerks have not been provided any training in legal research?

MR. STRUCK: Going to object. That calls for speculation. From who?

THE COURT: From anybody I guess.

MR. ADAMS: From the Department of Corrections.

MR. STRUCK: My objection is calls for speculation.

THE COURT: Okay. Department of Corrections.

THE WITNESS: I don't know what training they may have received prior to coming there.

THE COURT: No, Department of Corrections.

THE WITNESS: I don't know.

[108] THE COURT: You don't know whether they did receive—

THE WITNESS: They don't have anything at Perryville, but I don't know what—

THE COURT: Okay.

THE WITNESS: —before they come to Perryville.

BY THE COURT:

Q: Well, how about in your experience with them, do you find that they're able to find subject matter in books like you are?

A: Most of them are.

Q: Mmm hmm, do you know how they attained that ability? Do you personally know?

A: A lot of it they've done by doing.

Q: Have you trained them at all or done anything with them?

A: I talk with them. I find out—I know pretty much what they've done when I—after I've given the test, what they know and I try to fill in the blanks.

Q: From what knowledge you previously acquired did you make up the test?

A: Pardon?

Q: How did you acquire the knowledge that you use to make the tests?

A: Just reading in the books myself and—

Q: Which books?

[109] A: The—I have the little copy—photocopy of a pamphlet that was put out in California on how to use the law library. The West puts out their little help books on how to do things and we had a book on how to do research in the library.

Q: Okay.

CROSS EXAMINATION

(Resumed)

BY MR. ADAMS:

Q: Ms. Cathcart, isn't it true that on occasions prisoners have told you that they cannot read, prisoners who are in the law library at the complex have informed you that they cannot read?

A: A couple of them have.

Q: And isn't it also true that—strike that question.

QUESTIONS BY THE COURT

BY THE COURT:

Q: Do you have people who don't speak English in Perryville?

A: There's a few I think.

Q: Well, that would include them I expect. And how many years have you been at Perryville now?

A: About five.

Q: And there have been two prisoners that couldn't speak English?

A: There was only two that—

Q: Or read English?

A: —you know, that told me that they've had trouble.

* * * *

[112] A: Well, San Juan opened in December of '90 and Santa Cruz in I think it was in February, Santa Maria in March and San Pedro I think we opened in June, July or August, somewhere along there.

THE COURT: Of '90?

THE WITNESS: '91.

THE COURT: '91.

BY MR. ADAMS:

Q: Isn't it true that prisoners who are in lockdown may keep their materials for longer than 24 hours only because there are not enough people at the complex staff to retrieve the material?

A: If we don't go pick them up then they end up with them longer.

Q: Is that a yes?

A: Yes.

Q: Isn't it true, Ms. Cathcart, that it may take a week or longer for a prisoner to get his materials to lockdown once he's requested them?

A: It's possible, if I don't get the request.

Q: Isn't it true that has occurred?

A: It has.

Q: Isn't it also true, Ms. Cathcart, that you get requests from prisoners who are in lockdown that are unintelligible?

A: Repeat please.

* * * *

[115] THE COURT: Oh, I must confess we get some of them too.

BY MR. ADAMS:

Q: Ms. Cathcart, you mentioned in direct examination that you provide law clerks with a test which you developed. Is that correct?

A: What was the—

Q: You've developed a test that you give law clerks.

A: Yes.

Q: Is this test provided or done statewide or is it—

A: It's when I—

Q: —departmental—exclusively for Perryville?

A: Yes, it's one I've done.

Q: To your knowledge are legal assistants required to take this test, or do you offer it to them as well?

A: Not that particular test as far as I know.

Q: Is there some other test?

A: I don't know anything about what happens to them or how they choose the legal assistants. I don't have anything to do with it.

THE COURT: Who chooses them?

THE WITNESS: It's the deputy wardens approve it by policy.

BY MR. ADAMS:

Q: Isn't it true that law clerks are not allowed to do legal [116] research or write prisoners' pleadings?

A: Law clerks, while they're on the job?

Q: That's correct.

A: Yeah. That's correct. They don't.

Q: And a law clerk is a job, correct?

A: Yes, a law clerk is a job.

Q: In your direct examination you described an incident when you spoke to an Afro American prisoner at Perryville. You don't know whether or not the prisoner is Mr. Joe Harris, do you?

A: I do not know if that was him.

Q: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. STRUCK:

Q: The two inmates that you said walked up to you and said that they couldn't read, were they requesting help obtaining legal materials?

A: The one I remember best, he was sitting at a table with a book open and he asked me to read what was there, telling me he couldn't read and I really didn't know whether it was true or if he just wanted me to read it to him.

Q: Did you read it to him?

A: Yes.

Q: How about the other inmate, was he requesting legal materials?

[117] A: I think he was also asking me to just read what he had.

Q: Have these two inmates ever requested legal materials on other occasions?

A: I don't recall.

THE COURT: I suspect this matter could be handled quite simply by finding out at intake, I'm sure they determine whether someone can read and write, and there must be a percentage of that. I would think they would do it. I don't know whether they do it or not. If they do I would be interested in knowing that, what percentage of the prisoners in the general population, or a break down in some way if they have those figures what the figures are on illiteracy.

BY MR. STRUCK:

Q: Isn't it true when you were talking about the training of clerks you said there wasn't any formal training, isn't it true there is some informal training that goes on that's provided by you to the clerks?

A: Yes, I talk with them, answer their questions, tell them as much as I know as to the process to go to find material on the various subjects.

Q: When you get a request from an inmate in lockdown for legal materials that's unintelligible, what do you do?

A: I usually go talk to them and try to find out what it is they need and what it is they're working on.

Q: Okay. Thank you. Nothing further.

* * * *

[150] THE COURT: Right here, right here. She'll swear you in.

ANN REEDER TYSZKIEWICZ,
DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. STRUCK:

Q: Would you state your name please?

A: And what is your—

THE COURT: You can pull your chair up a little bit, then you won't have to go back and forth.

THE WITNESS: Yes sir.

THE COURT: Thank you.

BY MR. STRUCK:

Q: What is your occupation?

A: At the current time I was just reassigned as a CPO one at East Unit in Florence.

Q: At any time were you assigned to the SMU law library?

A: Yes sir, as an administrative assistant three.

Q: And when was that?

A: That was from approximately July 15th, 1990, till just about three weeks ago.

Q: Could you tell us your educational background please?

A: My educational background is an associate of arts degree in business and a bachelor of arts degree in English with a minor in history.

Q: You have any—have you gone to any seminars or anything [151] regarding law libraries or received any training in that regard?

A: Yes sir, I have.

Q: And what was that?

A: That would be the department usually every summer offers an educational and library seminar offered at different locations through this state. All the law librarians assigned to the different units meet and do some training regarding law libraries. There was one last summer I believe in July, think it was in July, and the year before that it was in June.

THE COURT: Who conducts the training? Who are the teachers in other words?

THE WITNESS: It's usually coordinated by Jenny O'Leary who is director of library services for ADC. She has brought in outside speakers.

THE COURT: Do you know who they are? Do you remember any of them?

THE WITNESS: No sir, that would be available through brochures.

THE COURT: No, I wondered if you remembered any.

THE WITNESS: No right now, I'm pretty nervous. I'm not remembering a lot of things.

THE COURT: Well, were they university types of teachers or what?

[152] THE WITNESS: In one circumstance at the Arizona State Library Association Conference, not this year, the previous year in Phoenix there was, I can't think of her name, Brenda Vogel who was librarian of the year

and she's director of correctional libraries for the state of Maryland for example. Different types of people with areas, people within ADC who deal with law libraries, Gail Parin. I believe Mr. McDonald has spoken at one or two of them.

BY MR. STRUCK:

Q: And you attended two of these seminars?

A: Yes sir. They're an annual training event.

Q: Is that a one day—

A: It's usually three days.

Q: Three days? What were your duties at the law library at SMU?

A: The overall operation of the SMU law and lending library, that included supervision of two security officers, just recently up to eight inmate clerks, although they weren't directly under my supervision I was responsible for their actions: scheduling, law library turnouts for the law library, coordinating with the shifts to have escorts available to and from, doing all the lending library procedures, issuing indigent legal supplies, running photocopies of materials for inmates, answering grievances for inmates regarding law library. Sort of a catch all for [153] anything that had to do with the library.

Q: As far as the actual materials that were contained within the law library, we stipulated to certain facts but there's some things that are in addition to that that I would like to go into. The law library at SMU had a prisoner self help litigation manual. Is that right?

A: That's correct, sir, multiple copies.

Q: And what—do you know what year that supplement was?

A: I sent for the most recent edition earlier this year. Due to the custody level of our unit oftentimes inmates tear up books, remove pages, sort of an ongoing process of updating the books, getting new copies.

Q: So you had more than one copy then of that manual?

A: Yes sir.

Q: You had, did you say three?

A: I believe I had three. I had two right out on a shelf and I kept one for a master. Earlier this year we had one, and this wasn't through neglect by anybody, they're just bound sort of dry, a whole bunch of pages fell out and et cetera, so we had to replace it.

Q: And that was the '91 supplement that you had?

A: Yes sir, I sent for the most recent copy they had, and they sent me a supplementary pamphlet along with it for any new information outside of their last published edition.

Q: I believe you just testified that part of the staff that [154] you supervise included eight legal clerks. Is that right?

A: Well, they were referred to as law library clerks as opposed to legal clerks, yes sir.

Q: Okay.

A: And three of those would be classified as lending library clerks.

Q: And were—did they all work during the same times or did that vary?

A: That varied, sir. Five of them, like I said, I gained another position so I could cross train someone in both areas. But five of them would be there from 7:00 to 3:00 during the day and the other three would come in from 12:00 until 8:00 in the evening.

Q: Inmates at the SMU law library don't have access to the shelves. Is that right?

A: That's correct, sir.

Q: And do you know why that is?

A: It's a very high custody level, and in order to facilitate the most people using the library that they can at a time, two I-5 custody level inmates at our institution can't be in any common area at any time, restrained or unrestrained. So in order to use a library to it's fullest we

had six individual stalls so that we could use it six times as much.

Q: And how does an inmate that's in one of these stalls [155] obtain legal materials?

A: They come up to the law library and speak with us. We give them a list so they can write down the books they need, the materials they need, what they're researching.

QUESTIONS BY THE COURT

BY THE COURT:

Q: In other words they tell you the subject matter they're interested in or what kind of an action they want to bring or the factual problem they have and then you give them the books that might be pertinent to that?

A: Yes sir, it varies. Some of the inmates were completing paralegal training courses and had very specific outlines for their studies and they would come down asking for specific materials.

Other inmates were rather well versed through their own experiences in what they were doing and were acting as legal assistants for the unit, and they were pretty, like I said, well versed. Some came up researching disciplinary topics only, involving internal disciplinary proceedings. And then we did have inmates that were coming up starting a general area of study in their topic.

Q: In other words if they come there, they don't have to have the name of a specific book, or do they?

A: No sir, it depends what area they're starting from. Some people are sort of confused. We usually try and refer them [156] to the legal assistant program if they don't know what direction they want to go. Some people are just curious. They come down and we can usually try and guide them through whatever topics they're looking at towards whatever kind of direction they want to look so they can see the types of cases that have occurred in that area.

Q: Mmm. hmm. Do you have any books that generally you find aside—you know, I'm not talking about the individual books that have law decisions printed in them, do you find any books especially helpful?

A: Yes sir, I think the Prisoner Self Help Litigation Manual is extremely helpful to a lot of inmates. There was an inmate who had taken his California Bar exam and completed correspondence courses. That was Dave Mann. And had written—would write a column in a publication called LaRocca, as well as publishing other information such as conflict resolution, different topics to help guide inmates in their studies.

We put together an introductory manual to—use of the law library and legal research so that when someone came up and were starting their research they could use that. We also acquired other books, the law library at North Unit has a deal with the Federal Court Building that he picks up the surplus books—

Q: Yeah. I've contributed to that.

[157] A: And any time we can find some that we think might be helpful, we get a lot of questions or inquiries on that topic, we try to make that book available in the library.

Q: Do you find any books, and I'm not looking for trouble now, I'm just trying to get information.

MR. STRUCK: No, you're doing a good job, Your Honor.

BY THE COURT:

Q: Do you find any books that are—that you know of that ought to be there and not? You can say it. I don't think anybody's going to fire you. If they do, just tell me and we'll take some action on it.

A: One specific book I think would be helpful would be like a federal case citator. Currently we use the Table of Cases for the Modern Federal Practice Digest Series and I—

Q: Federal case citator?

A: Yes sir. I think it would help the staff as well as the inmates to locate the federal cases a little bit more easily.

Q: I'm not even familiar with that book. What is it actually?

A: It's basically a table of cases for federal cases. When you look up in the Modern Federal Practice Digest and West Federal Practice Digest Second, Third and Fourth you can look under the table of cases but it's rather limited to something, how it's treated. * * *

* * *

[162] THE WITNESS: 1987.

THE COURT: Huh?

THE WITNESS: 1987.

THE COURT: 1987. There's been so many of them I keep—I told you before, the original one, I was telling Tom Tang again, I met him downstairs. You know we're still talking about—I am naturally, about the time you were chairman of a committee and that was when you were in private practice before you were a superior court judge, before you were an appellate court judge and before you were retired appellate court judge. The bar formed a committee at my request and he was the chairman of the committee to work out a library, the first library that they had. That was a long time ago in the 60's. Go ahead.

BY MR. STRUCK:

Q: How are—when you were at SMU how were copies made for inmates?

A: On the photocopy machine.

Q: Okay. What was the procedure if an inmate wanted to have legal copies made?

A: There's two different ways an inmate could do that. One is he could seal his items in a manilla envelope and send it to the law library. Some of them work in their own cells and send the materials down to us with

an inmate communications, [163] we call a kite inside of it, saying I need x amount of copies, could I please have them collated, stapled, whatever. We'll go ahead and run them and usually return those to them within 24 hours.

Also when an inmate is at the law library they can request copies. We usually try and hold them to the amount that's required for the courts along with a copy for their personal file. And we've got a list of what's required by the courts for them to file, otherwise we might be running off too many copies.

Q: Who actually does the copying?

A: The officer will take the photocopy work from the inmate and scan it for contraband. Periodically something will be stuck in the context of the—of all this work that he shouldn't have photocopied like stationary, something like that. We would scan it for contraband, give it to our inmate clerk and our inmate clerk then puts it on the photocopy machine, logs the inmate's name and number, the date, how many copies were run, whether it was case law out of a book and whether or not it was indigent, and whether or not he was paying for it and whether or not it was court documents so that we could differentiate at a later point.

Q: Did you supervise the inmates that were copying, periodically?

A: Yes sir.

[164] Q: And would the inmates actually read the documents?

A: Not unless they attended the Evelyn Woods speed reading course.

Q: Why is that?

A: There's a collator you could set up to 50 sheets at a time in the top of the photocopy machine and it feeds from the bottom.

Q: It's an automatic feed?

A: Yes sir.

THE COURT: Why don't we take our afternoon break?

THE BAILIFF: All rise.

(Recess at 2:46 p.m.)

THE BAILIFF: Court is now in session. You may be seated.

DIRECT EXAMINATION

(Resumed)

BY MR. STRUCK:

Q: Ms. Tyszkiewicz, what type of training did you give the law clerks? Strike that, did you give the law clerks any type of training at SMU?

A: Yes sir.

Q: And could you explain what you did?

THE COURT: Why don't you pull your chair up again then you won't have to bob back and forth. You'll last longer.

BY MR. STRUCK:

[165] Q: Could you describe for us the training that you gave the law clerks at SMU?

A: Recently it was a little bit more static than it was in the past. We had inmates turn over but more recently we've been able to bring in a new clerk and cross train him in the lending library and law library as well. So that way when a position became vacant, I wasn't left in the lurch without a clerk and he was trained in both areas.

We have a library instruction manual talking about what we can and cannot do in the library, sort of an adaptation of the policies in plainer language. When the officers are assigned to work for me I have them read it, sign it, date it, you know, for purposes of understanding. I make that available to the inmates. I encourage them to usually read the self help litigation manual, Introduction to Basic Legal Research. Usually when I get a new clerk I'll take them through an inventory of the library.

It's usually very helpful in showing them all of the books that are available, how they're updated, a lot of on the spot things. In a situation like that you have a lot of circumstances that come up once every six months. If something like that happens bring everybody over, explain it through, encourage them to use for example West puts out a number of pamphlets, how to sheperdize, you know, use of the different books, to read those, ask questions.

* * * *

[169] THE COURT: Oh, I see. That's what confused me a little bit. Okay. I got the Reeder right but when you were asking her about the name I thought maybe it was a middle name or something, but it's a married name?

THE WITNESS: It's usually so difficult to pronounce my last name I have everybody call me Reeder.

BY MR. ADAMS:

Q: Miss—may I call you Reeder?

A: You got it.

Q: That would make life a lot easier for me. If you're not uncomfortable doing it. Ms. Reeder, you've become acquainted with prisoners who are illiterate who are attempting to use SMU law library. Isn't that correct?

A: Yes sir.

Q: And haven't you recommended that prisoners who are illiterate who are attempting to use the law library at SMU who have attorney of record get legal assistance through a legal telephone call with their attorney?

A: Depending on the circumstance, yes sir.

Q: But isn't it correct that you have recommended that the prisoner receive legal assistance by talking to his attorney by the telephone?

A: Yes sir.

THE COURT: In other words right now they can't, [170] unless they have a schedule of some kind and it's prior approved, they can't talk to their lawyer on the phone?

THE WITNESS: I believe it's contingent upon the individual cases. I just recently started in a job that handles those and I know just in the three weeks that I've been in my new position, I've probably run four attorney phone calls for points of clarification, needing to meet with them, arranging a visit, things of that sort.

THE COURT: I guess I was just trying to get some free legal advice. I've got another case in there which came in this week where the prisoner's complaining he can't arrange for a phone call to his lawyer. He's got a lawyer, so I don't know what it's all about.

BY MR. ADAMS:

Q: But isn't it correct that your recommendation is based on the fact that the prisoner is illiterate and a law book alone does not help him?

A: Yes sir.

Q: Isn't it—

THE COURT: Well, excuse me one minute. Is there ability to have prisoners call their lawyers? Wouldn't that—you don't have enough phones for that, do you?

THE WITNESS: The reason why it's usually a scheduling problem is, is that we have different people wanting to call them. Sometimes the attorney doesn't want [171] the inmate to call them. That's sometimes the case and we have to honor the attorney's wish along the same lines.

THE COURT: Yeah, when I was in private practice I've thrown clients out of my office, you know, trying to say—bug the heck out of you.

THE WITNESS: Yes sir.

BY MR. ADAMS:

Q: But isn't it correct that the need for a prisoner to have to define an emergency, an illiterate prisoner to define an emergency in order to contact his attorney by phone, goes against your rationalization for why this

illiterate person needs to speak to his attorney by phone. Isn't that correct?

A: I'm not sure I'm understanding your question.

MR. STRUCK: Yeah. Objection, Your Honor. That question is unintelligible.

MR. ADAMS: I'll try and make it more simple.

BY MR. ADAMS:

Q: Isn't it correct that—are you familiar with the phone policy?

A: Yes sir.

Q: And isn't it the phone policy at SMU that prisoners have to indicate that they have a deadline or an emergency in order to get a legal phone call?

A: Yes sir.

[172] QUESTIONS BY COURT

BY THE COURT:

Q: Can the lawyer request of the prison that the prisoner be allowed to call him?

A: The attorney can notify the inmate in writing.

Q: And then what?

A: That they would like them to call them at such and such a time.

Q: And then what does the inmate then do, or prisoner?

A: The inmate then notifies his assigned correctional program—

Q: And shows them the letter?

A: Yes sir.

Q: Then they allow them to do it?

A: Yes sir.

THE COURT: That's where I am on this case, they haven't allowed him to do it, he says. I don't know if it's true or not.

CROSS EXAMINATION

(Resumed)

BY MR. ADAMS:

Q: Isn't it correct, Ms. Tyszkiewicz that a prisoner who is illiterate cannot use the mail?

A: I would assume so, sir.

Q: And therefore isn't it correct that that policy, the one that you've just described, would not cover the need of an [173] illiterate prisoner who needs to contact his attorney for legal advice. Isn't that correct?

A: I would like to give a short explanation to that if I may. Recently there was an inmate who stated to us that he was illiterate. Sometimes it's a real difficult situation, if someone can't read and write, for them to admit that to a lot of people. He came down and discussed the situation with us.

Because of his special need he couldn't then send us written communications to come to the law library. He set himself up in a whole bunch of different problems. So I went to the deputy warden and I asked his approval to go ahead and submit kites for days a week for this inmate, and to have one of my law clerks who also happened to be a legal assistant when this inmate came down to have conferences with him in order to read his communications and help him communicate better. Special circumstances can be taken when the inmate notifies the people of his special needs. If he doesn't tell anyone that he can't read, it's often difficult for somebody to make that presumption for him.

THE COURT: Do you have the discretion to do what you did?

THE WITNESS: It's just a personal philosophy for my job, sir, and how I chose to do it.

* * * *

[184] THE COURT: Yeah. But that's the question I asked you twice that you didn't hear.

MR. STRUCK: I'm sorry. I misunderstood you.

MR. ADAMS: There is foundation, Your Honor. This witness testified that she refers prisoners to the legal assistant program. That's the—

THE COURT: Well, I'm not going to take his word anyway, but find out what knowledge she has. I don't mean because I don't want to but because I think he's entitled to ask her since you're not a witness. Go ahead. Ask her what training.

BY MR. ADAMS:

Q: Are you familiar with the legal assistant program?

A: I'm familiar with it but I do not supervise it. It's handled by the disciplinary department at SMU.

Q: Does your familiarity include knowledge of the training of prisoner legal assistants?

A: At our particular unit there's no specific training. It's offered at other units.

THE COURT: Well, I mean in dealing with legal assistants do you find that they know anything about law?

THE WITNESS: Oftentimes due to the disciplinary nature of our unit they've spend quite a bit of time at other units before they came to ours. A number of the inmates have been privy to the legal training program they offered [185] regarding the Gluth decision at Central Unit, personal research of their own. There's inmates at SMU that participated in the legal correspondence school, legal assistant—just a minute, paralegal correspondence programs.

As far as you know personal recording of their programming, anything like that, I wouldn't be responsible with that, but through conversations with the inmates and contact with them I know that many of them have been allowed to participate in those programs

THE COURT: Well, are you comfortable with someone who has seen to the legal needs of inmates, with sending them—having them go to to a legal assistant to get legal advice?

THE WITNESS: Oftentimes yes because—

THE COURT: Sometimes yes and sometimes no probably.

THE WITNESS: Sometimes—

THE COURT: Depending on the training and background the legal assistants have, right?

THE WITNESS: And depending on how the inmate is approaching it. Some of the inmates don't have a pressing legal issue, they're just curious. And in that respect you can start them and you can have them spend the time reading and understanding and learning and progressing from there. If it's someone who has a dire need you're going to put them through to a legal assistant immediately and suggest that [186] they contact their attorney of record so that they can exercise all the rights afforded to them.

MR. ADAMS: No further questions, Your Honor.

THE COURT: Thank you.

MR. STRUCK: Nothing further.

THE COURT: All right. You may step down. You're excused then. Thank you.

* * * *

[251] THE COURT: Why don't you pull your chair up then you won't have to—

THE WITNESS: Okay.

THE COURT: —lean forward all the time and you won't—

THE WITNESS: Thank you.

THE COURT: Thank you.

BY MR. STRUCK:

Q: And how do you go about ordering items?

A: Well, if a volume is reported missing or some destruction done to it, the unit will call me and I'll put in a PR or a PO for that volume to the publisher for that unit.

Q: And do you also find out about missing volumes through inventories?

A: Yes we do.

Q: And do you also order new volumes based on inventories?

A: Right. Yes, we do.

Q: There's been some testimony that there were some missing volumes at the Rynning law library. Are you familiar with those missing volumes?

A: Yes sir.

Q: And how did you become familiar with those missing volumes?

A: Well, CSO Powell informed me that all the books—

MS. BENDHEIM: Objection, hearsay.

* * * *

[261] Q: Of 1991?

A: Of 1991.

Q: Before I forget, have you had any training at all in law libraries or law library supervision?

A: We went through a nine week course in Central Unit. It was set up for the inmate legal assistants and the law library supervisors also participated.

Q And when was that?

A: Believe that was in January of '91, January or February. Not sure of the month.

Q: And what did this training course entail? Do you recall?

A: It was a very basic introduction to law, constitutional law and some post conviction law.

THE COURT: Who gave the course?

THE WITNESS: Your Honor, I don't remember her name.

THE COURT: Where was she from?

THE WITNESS: That I'm not certain of either, sir.

THE COURT: Was she on the staff of the prison or was she from the outside?

THE WITNESS: No sir, I believe she taught—I believe she was involved with legal services on some Indian reservation or she started that course up there. I really am not certain on her legal background or—

THE COURT: In other words she was a lawyer?

[262] THE WITNESS: She was an attorney. Yes sir.

THE COURT: Okay.

BY MR. STRUCK:

Q: About approximately how many inmates use the Rynning unit law library per day?

A: I would say between 50 and 60.

Q: How many can use the law library at one time?

MR. FATHI: Objection, Your Honor. We were told that this witness would be coming to contradict one specific allegation made by John Doe I, prisoner witness in his trial testimony. This is far beyond the scope of that. And in spite of Your Honor's previously expressed views that perhaps we're too liberal—

THE COURT: No, I just didn't want to spend a lot of time on the other matter, as to whether it was within the scope, was out of the scope. That would have had more questions and all the rest of it. Why are you going beyond what you talked about doing?

MR. STRUCK: Because, Your Honor, the Rynning Unit Law Library was never discussed by the plaintiff's legal access expert, Mr. Wilbur, because he never visited due to the fact that it's so recently opened. And defendants didn't anticipate there was going to be any testimony at all about this particular law library until the plaintiffs had John Doe I discuss the Rynning Unit Law Library, which was not * * *

* * * *

[264] THE COURT: Well, I suppose there's enough time for you, if you want to, if you feel that any of this is a problem for your side to dig into it and present it in rebuttal.

MR. FATHI: That's fine, Your Honor.

THE COURT: And since there was no testimony about this place at all it can be useful either way. So he would be allowed to do it too if he wants to bring anything up. So you go ahead.

MR. STRUCK: Thank you.

BY MR. STRUCK:

Q: What are the hours currently at the Rynning Unit Law Library?

A: We're open from seven o'clock to 8:15 at night.

Q: And how many days a week?

A: It's five days a week Monday through Friday.

Q: If an inmate wanted additional time and wanted to get it in the weekend, would he be able to.

A: No, he would not.

Q: If he has a court deadline can he get additional hours in the law library?

[265] A: Yes, we reserved evening hours for inmates that have court deadlines, also inmates that are day workers that are—would have a difficult time accessing the law library facility.

Q: How many law clerks are on your staff?

A: I currently have five law library clerks on my staff.

Q: And are any of the law clerks Hispanic?

A: Two are Hispanic.

Q: And they speak Spanish?

A: Yes, they do.

Q: If an inmate wanted to know what was in the law library would they be able to review an inventory list?

A: If they so requested I would have no objection to them looking at it. I have not been asked by an inmate to see the inventory list.

Q: How are copies made at the law library?

A: The inmate normally hands his copies that he wishes to be requested to my copy clerk or to any other

clerk that's on hand or not busy at the time, and the clerk will then copy the legal material.

Q: Is the copy machine in plain view?

A: The copy machine is in very plain view. The inmate can watch—well he transfers the legal documents to the inmate that's copying and within four or five feet is the copy machine in plain view of the inmate.

[266] Q: Do you have notaries there?

A: Yes.

Q: How many notaries do you have?

A: Myself and Officer Woods. I work the evening shift, Officer Woods works the day shift.

Q: That's five days a week?

A: Yes.

Q: Do you know how many legal assistants are available at the Rynning Unit?

A: There's approximately 11.

Q: Do inmates that are in lock up at the Rynning Unit have an opportunity to physically access the law library?

A: Yes, they do.

Q: And how do they go about getting—making a request to get into the law library?

A: They would submit a request with an inmate that's not on lock up and there is a period reserved seven o'clock to nine o'clock Monday through Friday, Friday would include nine o'clock to 11 o'clock for a total of 12 hours per week.

MR. STRUCK: Your Honor, may I approach the witness?

THE COURT: Yes.

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* * * *

[130] Q: Do you have any idea what he spent those items (sic) on?

A: No I don't.

Q: If Mr.—

THE COURT: Is there a policy that somebody can tell us about with respect to how much they can—it says on here a \$40 limit, and are there any other limits? They may spend up to that amount?

BY MR. STRUCK:

Q: Could you tell us what the dollar amount is to be an indigent, to get legal supplies?

A: To get legal supplies you can't have \$22 on your books within a 30 day period.

Q: Okay. And because Mr. Bishop had \$25 on the books he was taken off the indigency status?

A: That's correct.

Q: And would he be able to reapply for indigency status?

A: I believe on January the 9th, I believe.

THE COURT: In other words, 30 days from the day he got the check?

THE WITNESS: That's correct. If he spent it on the 6th or the 9th. I don't remember which day he spent it on.

BY MR. STRUCK:

[131] Q: So that would be 30 days from when his account went above \$22?

A: That's correct.

Q: Have you had an opportunity to look through this particular list and calculate personal hygiene items?

A: Yes I have.

Q: As far as the cost? Could you tell us which personal hygiene items you listed in your calculations?

A: I marked an X on what I would consider basic personal hygiene items for—and it came out to \$8.05.

Q: What items did you mark an X on?

A: I marked Irish Spring soap, Suave conditioner, Suave shampoo, toilet paper, toothbrush, toothpaste, and a roll-on deodorant.

THE COURT: We were told by a prior witness who's a dentist in the institution that inmates were provided toothbrushes and toothpaste free. Is that the truth?

THE WITNESS: On indigency.

THE COURT: No, he didn't confine it to indigents.

THE WITNESS: I'm not sure.

THE COURT: But indigents are?

THE WITNESS: Yes.

BY MR. STRUCK:

Q: Do you know if toothpaste and toothbrushes are provided inmates upon intake?

[132] A: Yes they are.

THE COURT: I hope they don't have to have it for 30 years. I think they recommend that you get rid of them every six months, not that I do that, but I get rid of them when they get ragged.

BY MR. STRUCK:

Q: If Mr. Bishop testified that he purchased coffee, shampoo and soap, could you calculate for us quickly what that would amount to?

MS. AIYETORO: Could you give us the page number you're referring to on this testimony?

MR. STRUCK: Just a second.

THE COURT: It's right on the first page where the X is—

MS. AIYETORO: No, no. He referred to the prisoner's testimony—

THE COURT: Oh, I'm sorry.

MS. AIYETORO: —and I want the page number.

THE COURT: Excuse me. I didn't hear.

THE WITNESS: Should I answer?

THE COURT: Pardon me?

THE WITNESS: Can I answer?

THE COURT: Yeah, do you know the page number?

THE WITNESS: No, on that I know what the approximate cost would be.

[133] THE COURT: Well I think you better wait until he finds what he's looking for. The question included something that they wanted to know what page it was on, so we might as well wait until they find it.

(Pause)

MR. STRUCK: I believe it's on page 154, December 17th transcript.

THE COURT: Okay, they got it.

BY MR. STRUCK:

Q: Could you calculate for us how much coffee, shampoo and soap would have cost?

A: It would be approximately about six dollars.

Q: Thank you. Mr. Bishop is a legal assistant is he not?

A: Yes he is.

Q: As a legal assistant is Mr. Bishop eligible to get indigent supplies for the people that he does work for?

A: If they're indigent, yes he can.

Q: Thank you. I have nothing further.

* * * *

[136] Q: Have you ever added up what persons could buy that were kind of basic things, like soap and shampoo, and cigarettes, and maybe a couple of candy bars, not extravagant items, to find out how much a person could spend without really, you know, being extravagant, and compare that to the indigency. Have you ever done that?

A: Mmm hmm.

Q: And what did you come up with? I'm sorry, did you say you had done that?

A: Yes I have.

Q: I'm sorry. And did you come up with a figure?

A: It's about \$20.

Q: About \$20. So that would mean a person had two more dollars left if they got \$22 in their account?

A: That's correct.

Q: I see. You indicated that a person, once they get above \$22 in their account, would be taken off for 30 days. When do you start calculating the 30 days? I'm not sure I was clear on that.

A: From the date that they had the \$30 (sic) on their account.

Q: Okay. So—

A: Spendable amount, yeah.

JANUARY 9, 1992

* * * *

[70]

JUDY FRIEGO, DEFENDANT'S WITNESS SWORN

DIRECT EXAMINATION

BY MS. WIENEKE:

Q: Good morning.

A: Good morning.

Q: Can you introduce yourself to the Court please?

A: My name is Judy L. Friego.

Q: What is your present occupation?

A: Assistant deputy warden.

Q: And where do you serve in that capacity?

A: Women's Prison, Florence.

Q: By whom are you employed?

A: Arizona Department of Corrections.

Q: Does the Women's Unit in Florence have a law library?

A: Yes.

THE COURT: Can you pull your chair up please? Thank you.

THE WITNESS: Yes.

BY MS. WIENEKE:

Q: Can you describe that facility for the Court please?

A: It's a room. It's got a full complete library, approximately five or six huge shelving units with law books. It's got five or six desks, typewriters. It's air conditioned, carpeted.

* * * *

[79]

CROSS EXAMINATION

BY MS. AIYETORO:

Q: Good afternoon.

A: Hi.

Q: I don't have to introduce myself to you, because you already know me. I just have a few questions of you. You indicated that you felt Pam McQuillen was able to handle the work that she did as a legal assistant. Do you review the quality of her work?

A: No, not—no, not physically.

Q: Have you ever had Spanish speaking only prisoners on your yard?

A: Yes I have.

Q: Does that happen rather frequently?

A: No.

Q: How frequently does it happen?

A: In three years, I think we've had two or three.

Q: Do you have people who speak some English, but not very good English on your yard?

A: Two or three, those two or three.

THE COURT: Do you have people who are illiterate, who can't read or write?

THE WITNESS: Some, not very many.

* * * *

JANUARY 14, 1992

[92] Q: When did you become administrator for programs?

A: Oh I believe it was in April or May of '88.

Q: At the time you left your position as administrator for programs, how many law clerks did the Gila law library have?

A: I believe they have three.

Q: Are any of them Spanish speaking?

A: Yes.

MR. STRUCK: Your Honor, the reason I'm going into this is because this was not an area that was covered by our stipulated facts. The Mohave law library staffing is in there, but the Gila is not.

BY MR. STRUCK:

Q: I'm sorry, you said you had three law clerks?

A: Yes.

Q: And one of them is Spanish speaking?

A: Yes.

Q: How many legal assistants are at the Gila law library?

A: I believe there are three.

Q: How do inmates at the Papago DWI Unit utilize the law libraries?

A: They make a request to be transported there. I'm not sure whether the request just needs to be verbal or they actually need to make it in writing, but as far as I know there's been no complaints about getting access to the Gila library.

[93] Q: Which law library does the Papago Unit go to?

A: They utilize the Gila library since they're both minimum custody.

Q: About how quickly would an inmate at Papago get to the law library at the Gila Unit after a request is made?

A: Oh it should be the same day unless obviously the request is made after the shuttle has already left and then they'd have to wait until the next day. The same day or within 24 hours.

Q: If an inmate is in lockdown at Douglas how does he get access to the law library?

A: He makes a request in writing for legal materials.

Q: Does that request have to be specific?

A: No it doesn't. Initially I thought it does—we prefer that it's specific because it makes the research and the copying of materials a lot easier, but the inmate can say I would like some materials in a certain area and if he doesn't provide enough information the law librarian—well the law librarian goes to lockdown five days a week, every, I mean she works five days a week so every day she's present there she goes through the lockdown unit and collects these requests. If the requests are too general and they need more information she goes back and asks for more information and the law clerks are very helpful in doing that research and providing the information that the people in lockup are [94] looking for.

Q: How does an inmate request a legal phone call at Douglas?

A: Again, that's usually done by an inmate kite to the counselor. Actually there's a classification parole supervisor now who is responsible for caseload services and lockdown and they make the request in writing and they're probably scheduled as soon as can be arranged. I would say generally within 24 to 48 hours after the request.

Q: Does the inmate have to specify that there's a court deadline in the request to get a legal call?

A: We like to see that, although it's not required. Generally most inmates requests for phone calls are granted unless we feel someone is abusing that and then we will ask them for more specific information.

THE COURT: Do you keep a record of when you receive a pleading from an inmate that he—or paper, legal paper that he says has to meet a court deadline, of when you get it, do you keep a record of that?

THE WITNESS: I don't know if they keep a record of it I think they just ask to see it and then if the coun-

selor, you know, sees that there is a deadline to meet then they say well I understand—

THE COURT: No the reason I brought it up, I've told counsel already, that the Ninth Circuit's been after us and I have cases and the other judges in this courtroom have [95] cases in this courthouse where the Ninth Circuit has told us that we have to grant a rehearing on the issue of when the pleading was filed with the state prison authorities. And we, as far as I know—did you ever find anything out on that? If that's been worked out or not?

MR. STRUCK: No, Your Honor, I don't, I haven't made any attempt as of yet to find out about it.

THE COURT: It seems to me a practical thing to do and I wish somebody would do it one way or the other.

MS. WIENEKE: Your Honor, Mr. Upchurch who, as you may recall, testified and you spoke to him about that, has agreed to look into that matter.

THE COURT: Oh and he will then?

MS. WIENEKE: Yes, Your Honor.

THE COURT: Oh good, thank you.

BY MR. STRUCK:

Q: Where is the legal call made?

A: It's usually made in, let's see, I would imagine it's made in the classification parole supervisor's office. The inmate is escorted there and the phone call is made.

Q: Is there anyone in the office at the time the call is made?

A: I would imagine usually the person arranging for the phone call is there, but if he is asked to leave he will leave.

* * * *

[97] A: I believe there are because I phoned the librarian on Friday just to get some additional information before I came up here. One of the questions I asked the librarian is that, could the inmates make general legal requests and she said yes and then in making her state-

ment she said for example if an inmate has problems with a divorce proceeding or custody proceeding they will ask the inmate that and they will do the research for it. So they obviously have that kind of material available to them in the library.

Q: We've already stipulated that there's a video in the law library from West Publishing Company. Mr. Sloboda are there any other self help videos at the law libraries?

A: Yes there is one from a professor at the University of California, and I believe it's called Legal Research Made Easy. It's not only available in each of the law libraries, meaning the Mohave law library and the Gila law library, with a small television set equipped with a, you know, a video player. It's one of those self contained units. We also show both tapes every month on our closed circuit television system to the total inmate population and it's just shown on a scheduled basis once a month, or both tapes, excuse me, are shown each month around the middle of the month.

Q: Do you recall what the name of the professor is that puts out that video? Does Robert Berry ring a bell?

* * * *

JANUARY 15, 1992

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[94] A: I have a master's degree in library science from the University of Arizona, a bachelor's degree from the University of Florida. I've worked in university libraries. I've worked at the Western Archeological and Conservation Center on a special project as a librarian. I've also been a school librarian.

Q: What year did you get your masters?

A: 1976.

Q: How come you don't have a degree in law library science?

A: There is no such degree, and I attended the American Association of Law Libraries Conference which

the Department sent me to last July. And this was one of the things that was brought up as a problem. There's only one library school that even offers very much in the way of law librarianship, and I believe it's a school in Virginia. This is something that the American Library—American Association of Law Libraries is trying to have happen, more courses in law librarianship.

Q: You mentioned some of your other jobs that you had before you worked with the Department. Could you tell us in a little more detail about the experience you've had working in libraries?

A: At the Western Archeological and Conservation Center, I was hired to do a special project of cataloging, some rather specific cataloging in that field. And so I worked for six [95] months taking care of that on line cataloging with the Library of Congress.

And I was a reference librarian for a semester filling in for somebody who was away at Pima Community College.

All through my own college career, I worked in university libraries. I also worked at the University of Southwestern Louisiana Library, and I guess it was about 1961 and '62.

Q: Do you have any legal law library training at all?

A: Yes. Probably the very best was I spent, oh three or four hours with Ned White, who's a gifted law librarian at the University of Arizona Law School, one on one. He was extremely helpful to me.

Q: What type of things did he help you with?

A: He walked me through the collection at the university law school, and just told me specific things about each one, and the best ways to access the collection, gave me little tips, such as if you don't know what report or something might be in, if you go to the older volumes of the reporters, the regional reporters, it lists the states on the older volumes, little tips like that, whereas the newer volumes do not do that.

I also had some training with Bill Streit who was then the complex librarian at the Tucson complex. He has a

[96] master's degree and quite a lot of experience in law librarianship. And I also attended a workshop at the NAU law library with a very gifted law librarian. In addition to that, the complex at Tucson has a number of videos, some of them from West Publishing, other companies also, and I have watched all of those, probably 30 hours in videos.

Q: When you said that Mr. Streit had a masters, did you mean he had a masters in library science?

A: A masters in library science.

Q: Have you attended any seminars anywhere else in the state?

A: No, just NAU, U of A.

Q: What types of things did the NAU seminar cover?

A: Now when you said had I attended any other seminars, I did go to the American Association of Law Library's convention.

Q: And when was that?

A: And that was in July, and the Department sent me. And there were a number of very good things there, and all of it was law library. I attended a seminar on management. I attended a seminar on copyright. I attended a seminar on library services to prisoners, which was excellent. A panel consisting of a judge, prison librarian, and a university librarian whose field was special services, and consequently she received a lot of the correspondence from prisoners.

[97] Q: When you came back from that conference, did you spread your wealth of knowledge that you gained?

A: Yes, I shared. It had already been set up that I would do this, and I presented a talk on the conference to all of the DOC librarians. We gathered together in Casa Grande.

Q: Why don't you tell me what your duties and responsibilities are as the librarian at the Santa Rita Unit.

THE COURT: Excuse me a minute. Do you know how many there are all together?

THE WITNESS: Librarians?

THE COURT: Yeah, in the prison system.

THE WITNESS: Well when I use the term librarians—

THE COURT: I'm sorry to do that.

THE WITNESS:—not necessarily trained librarians. Some of them I consider acting librarians. Well they are—we call them librarians, but they aren't degreed librarians.

THE COURT: Well whatever their background is.

THE WITNESS: I do not—I cannot tell you exactly how many, no.

THE COURT: How many do you think were there?

THE WITNESS: Oh. I can tell you exactly how many people attended my talk, 21.

THE COURT: Okay. Go ahead.

* * * *

[99] Q: They actually have access to the other libraries at the other units.

A: They have access to the unit libraries of the units where they are housed.

Q: Does every housing unit, besides the complex detention unit have their own law library?

A: Every—well we don't exactly call it a housing unit. We just call it a unit, because there are house—a number of housing units on each unit, but yes, every unit has its own library.

Q: Could you tell us how the law library at the Santa Rita Unit is staffed besides yourself?

A: As far as inmate clerks, I have three clerks. And on my day off, my supervisor covers the library as far as a staff person, not an inmate.

Q: Why don't you tell us what your hours are at that—

A: I work 7:30 to 4:00 Monday through Thursday, and also on Saturdays.

Q: What are the hours of your law library there at Santa Rita?

A: 8:30 to 10:30, and then 12:00 to 3:00, and then two evenings a week from 5:00 to 6:30. Two days a week we are open from 11:00 to 12:00 to have the RV unit in. And I forgot to say that I also provide legal services to the RV unit, Release Violators unit. They are on the Santa Rita [100] yard.

Q: How many people are in that unit?

A: As many as 50. Right now I think there's 36. And we're also open on Saturday afternoons.

Q: Do you have any legal assistants at Santa Rita?

A: Seven.

Q: Are any of the legal assistants Spanish speaking?

A: Right now, no. I did have two. Both have left the yard within the last six months.

Q: Are you attempting to get a Spanish speaking legal assistant?

A: Yes.

Q: Any of your law clerks Spanish speaking?

A: Yes.

Q: How many?

A: One.

Q: Could you tell us what the staffing is at the other law libraries at the Tucson facility?

A: Echo has a full-time librarian who has a master's degree. Rincon has a full-time librarian who has a master's degree. The complex librarian is full-time, and has a master's degree. Right now the Cimmaron position is vacant, and it's staffed by an officer, and also by teachers in the admin—or the supervisor in the education department at Santa Rita.

Q: When you say—when you said that those other three [101] librarians had master's degree, you mean they have a master's degree in library science?

A: Yes.

Q: If the individual at the Cimmaron law library needed assistance, could he call on somebody else?

A: The complex librarian, yes.

Q: How many law clerks are at the other units?

A: Cimmaron has two law clerks, Echo has one, and Rincon has five.

Q: And how many legal assistants?

A: Cimmaron has 13, Echo has one, and Rincon has five.

Q: Do you know what the hours of operation are for the other units law libraries?

A: I can't give you the specific hours, and I think that would be confusing—a confusing way to manage it anyway, but I can give you the total number of hours per week.

Q: Okay.

A: Cimmaron is open 61 hours per week, Echo 76 hours per week, and Rincon 80 hours per week.

Q: Do you have any—are you responsible then for hiring the law clerks?

A: Yes.

Q: When you hire a law clerk, is there any exam that you give them?

A: I do two things. I have an application form which I [102] designed which asks for background, asks questions about their skills, typing, computer skills, et cetera. In addition to that, I have them take the GED exam unless it's clear to me on my—what I call my application/interview, if they haven't completed high school, then I make sure they take the GED or the Tabe test which tests ability levels, and places them in the proper GED class. In addition to this I have a law exam. If the applicant is somebody who's been on the yard a long time, and I pretty well know what he can do, then it's much easier. If not, I really need to depend on that—my law test.

Q: So if there's an inmate that you're familiar with on the yard, and you believe that they have acceptable skills, then you don't necessarily give them the test.

A: That's right.

Q: Could you describe for us what this test entails that you give the other law clerks that you're not so familiar with?

A: Yes. It asks general questions like what's a digest, what's a horn book. It asks some specific questions about books that anybody who would want to do legal research would know. It asks what shepardizing is. And then there's a matching—one question that's a matching where you just draw lines to what definition applies to what word. There's a question about rules of evidence. It's a pretty extensive test.

[103] Q: When you say pretty extensive, about how long would it take to complete?

A: It takes a couple hours.

Q: Do the legal assistants take this test as well?

A: Again I kind of judge how capable they are. In the event—in the case of legal assistants, I usually don't give that test, because I'm not the one who makes the final decision on legal assistants. That's up to the warden.

Q: But you have given a legal assistant that test in the past?

A: I have and then I base a recommendation on that.

THE COURT: Isn't the final appointment of a legal assistant up to the warden—

THE WITNESS: Yes.

THE COURT: Well now wait a second. Because of security reasons rather than whether he would make a good—he or she would make a good librarian?

THE WITNESS: That I don't know.

THE COURT: I expect so.

THE WITNESS: It sound logical.

BY MR. STRUCK:

Q: Could you tell us what the duties of a law clerk at the Santa Rita Unit are?

A: Generally assist patrons, help them find books, teach them how law libraries work, anything from shepardizing to [104] how am I going to find a case about

this, or what does this abbreviation mean, what does this F.2d mean.

Q: How do inmates on the Santa Rita yard get access to the law library?

A: Walk in. Walk in and sign the log book, no passes, no extra paperwork is required. It's an open yard.

Q: Do you know what the capacity is at the law library, at the Santa Rita law library?

A: You don't have to have a pass.

Q: No. Do you know what the capacity is at the law library?

A: Oh, what the capacity is. Well that's very interesting, because I try to think of the library as one library, and I allow people from the law library to—if it's—if they're—it's rarely really full. I've never turned anybody away. But if it does get somewhat crowded, they can come over into the general library, and it's really just all one. And I even have a typewriter for law people set up on the general side.

Q: How many typewriters do you have at Santa Rita that inmates can use?

A: Nine.

Q: Are they electric?

A: Six are.

Q: Would you tell us what the duties of a legal assistant at Santa Rita are?

[105] A: Legal assistants can actually draft pleadings, and do just about any kind of legal work for an inmate.

Q: Are you responsible for setting up the legal assistants' schedule for—strike that. How does an inmate who is at CDU get access to the law library?

A: He fills out a request form. I designed a request form, and he fills that out, gives it to the officer sometime during the day or evening. It's in my box the next morning, the following morning when I get to work.

Q: How does the inmate—so they would request—strike that. How do the inmates at CDU know who to request for a law assistant, legal assistant?

A: There's a posted notice at CDU saying just exactly who the inmate legal assistants are, and what evenings they come to CDU.

Q: Are there any restrictions on the number of requests that an inmate could make?

A: No.

Q: An inmate in CDU?

A: No.

Q: Are there any restrictions on the number of times that a legal assistant could go to CDU?

A: Well there's the constraint—I mean he can't just go to the gate, and say I want to go to CDU. He has to be allowed; he has to be approved. But other than that, no there are [106] none.

Q: On the number of times he can go.

A: No.

Q: If a legal assistant wanted to see one of their clients in CDU, can he just make that request?

A: Provided he's approved to travel to CDU.

Q: So an inmate that's in CDU doesn't necessarily have to request to see a legal assistant.

A: It can—correct. If the inmate legal assistant has some reason to see somebody at CDU, he lets me know, and I simply put that on the list for that evening.

Q: Do inmates at CDU have to make specific requests—if an inmate didn't want a legal assistant, if he just wanted some materials from the law library, how is that done?

A: If he knows the specific citing, that's fine, and he lists that. We have a place to list that. If he only has a general topic, if he wants policies covering whatever, he can tell us that. We will also shepherdize for inmates. So if he can give us a general idea of what he wants, we will try to help him. Another thing we do which I was very worried about when I attended the copyright seminar at the American Association of Law Libraries, we copy indexes of books in order to help them determine what they need.

Q: What happens if you get a request from an inmate at CDU for materials, and you—it doesn't make any sense to you, [107] you don't know what they want?

A: I—sometimes I will call the officer at CDU, and ask him to get on the intercom, and find out, ask the inmate some questions. More frequently I wrote a note saying be more specific, or I ask a couple of questions that help define the problem in what he needs.

Q: So you'll actually make an attempt—

A: Yes.

Q: —to figure out what it is.

A: Yes.

Q: Would you ever just send back the request, and say be more specific, I can't help you?

A: Well I don't think that we would say can't help you. We have sent back requests asking them to be more specific. And if we have an idea of what it is, we frequently say be more specific, and send them the index of something that we think is where they're headed.

Q: But you don't require them to give you a specific citation, do you?

A: No. Many of them do give us many specific citations.

Q: What is the turnaround time from the time an inmate makes a request at CDU for legal materials till the time they actually get it?

A: Well a little bit depends on the time, the day of the week that he puts it in. For instance, we go—we send [108] inmate legal assistants Monday, Wednesday and Friday nights. So if he puts it in after the inmate legal assistants leave on Friday, I will get it on Saturday, but he won't get it back till Monday night. Whereas if he puts it in on Tuesday night, it'll be in my box on Wednesday morning. He'll get it back Wednesday evening.

Q: How is the copying done at the Santa Rita law library?

A: We have a law clerk who operates the copy machine. We have an excellent copy machine, and he does the copying.

Q: About how long does it take for say if someone comes in with some copies, how long would it take for them to get their copies generally?

A: Many times five minutes. If we have a backlog, or in the very middle of some copying for CDU, usually we'll interrupt the CDU copying. But I would say at the most 15 minutes, and he can just stand there and wait for it.

Q: As he's standing there, can he actually watch the copies—

A: Yes.

Q: —being made?

A: Yes.

Q: Do you have any policies regarding the copying of the Arizona Department of Corrections' policies and procedures for inmates?

A: Yes. I copy them free, whether it be for inmates at CDU, [109] the RV Unit, anybody, I will copy policies for free.

Q: Even if they're not indigent?

A: Yes.

Q: Have you ever had any illiterate inmates request legal services or legal help?

A: Yes, and I have two things that I do. I put him with whoever I think is most appropriate to help him. For instance, if it's a Spanish speaking with the—I put him with our Spanish speaking law clerk, and they do help him. But I also do everything in my power to get him to the literacy classes. Right now I don't know of any literate (sic) people who are asking for help on the Santa Rita yard.

Q: Any illiterate people?

A: Yeah, illiterate people. I do remember one that was illiterate, that I did just exactly what I said. And he did go to the literacy classes, and he learned to read.

Q: When you're providing materials to the inmates at CDU, do you ever actually bring them the book?

A: Yes.

Q: How long can they keep the books?

A: Overnight or sometimes even for two nights. Usually just over night, because I don't like to see the Santa Rita collection not have a full collection. So if we've taken a book over, I generally will stop on my way in in the morning and get that book.

[110] Q: If there was something in that book that they wanted copied, would you do that?

A: Yes. We do extensive copying, 100 pages sometimes.

Q: Is there any restriction on the number of books that you'll bring an inmate at CDU?

A: No.

THE COURT: He means at one time. You understood that?

THE WITNESS: Well it really hasn't happened too frequently, because they can't keep them a long time. So they only ask for one or two. I've never had anybody ask for more than two at a time.

THE COURT: How long can they keep them?

THE WITNESS: Well as I said, I don't like the Santa Rita collection to be without the books. So I usually pick them up the next morning. Some things I have two copies of. Prisoner Self Help I have two copies of. I let that go out for a week.

BY MR. STRUCK:

Q: But as you said, if you want to make—if they wanted a copy of something, you'd make a copy for them.

A: Yes.

Q: How do inmates at the Santa Rita yard know who the legal assistants are?

A: The list is posted in many places, all the counselors' [111] offices, all the housing units, at the library. The list is all over the place.

Q: Inmates are allowed to roam the stacks at Santa Rita?

A: Yes.

Q: Are they allowed to roam the stacks at all the other law libraries at Tucson?

A: Yes.

Q: I have no more questions.

MR. ADAMS: One moment, Your Honor.

CROSS EXAMINATION

BY MR. ADAMS:

Q: Good afternoon, Ms. Joyner.

A: Hello.

Q: I noticed you were looking at notes. May I see a copy of those notes?

MR. STRUCK: I have no objection, Your Honor.

MR. ADAMS: May I approach the witness, Your Honor?

THE COURT: Sure. They even get them from FBI men. So you're in good company.

THE WITNESS: I won't take it personally.

BY MR. ADAMS:

Q: Ms. Joyner, you indicated that you attended a seminar, and that you gave a talk to the persons who staff law libraries in the Arizona Department of Corrections. I believe the number was 21.

[112] A: No. They were 21 people in the group. Some were there, the supervisors of librarians. I don't know exactly what everybody did, but I believe all the DOC librarians were there.

Q: Isn't it correct that it is not your responsibility to train persons who staff the law libraries in the libraries throughout the system?

A: That's correct.

Q: You indicated that you provide law clerks with an examination.

A: Sometimes.

Q: Sometimes. You hardly ever provide legal assistants with an examination. Isn't that correct?

A: I wouldn't say hardly ever. Probably about the same frequency or ratio that I do the law clerks.

Q: Do you remember having your deposition taken?

A: Yes.

Q: It is your testimony that you provide law clerks and legal assistants examinations at approximately the same rate of time?

A: No. It's—this is a hard generalization for me to make, because I am inconsistent.

Q: It is your practice, as I understand your testimony, to provide law clerks examinations when you deem it necessary. Is that correct?

[113] A: Correct.

Q: And there is no policy that you're operating out of that's developed by the Department of Corrections that law clerks be tested. Isn't that correct?

A: That is correct.

Q: And there is no policy promulgated by the Department of Corrections that legal assistants be tested. Isn't that correct?

A: That's correct.

Q: The examination that you give law clerks, what does that exam entail?

A: As I explained when I was asked this question previously, it's a general exam. I believe that both of you all have copies of it. You were given copies of it. And it has questions about digest, questions what is a horn, just some very basic questions, and it has some more specific questions. It also has a matching question where they match explanations or definitions with titles of books.

Q: And isn't it correct that you do not have a set grade or passing score that each law clerk must take—must reach?

A: That's correct. I use that exam to give myself a sense of does he understand this, or does he not understand this. And very frequently what will happen is a person will come in, and they'll sit down, and they'll spend a couple hours. They'll do the exam. They'll do

very well. And then I've [114] had it happen more than once that a person sees the exam, and immediately decides he doesn't even want to be a law clerk. Or sits down with the exam, and in half an hour comes to me and says I can see this is not what I need to do, what I'm capable of doing, or that I don't understand this enough.

Q: And isn't it correct that the primary responsibility of the law clerk is to show the prisoner where to find a law book, to get law material for that particular prisoner?

A: That's one of the primary responsibilities.

Q: And what is another responsibility? What is another primary responsibility?

A: Well I believe that law clerks should have a little bit of understanding of what they're doing, know how to shepardize, and I mean you can't just—it sounds to simple to say where the books are. A little bit of a sense of when it's appropriate to look for which books.

Q: Isn't it correct that the law clerk is not required to—in fact is prohibited from doing legal research and drafting pleadings for prisoners?

A: That's correct.

Q: You indicated that the law library hours are I believe from 8:30 to 10:00?

A: 30.

Q: That's 10:30 a.m. or p.m.?

A: A.m.

* * * *

[116] A: * * * When you're an open yard, nobody needs any passes. I've never turned anybody away from the law library. There isn't anybody that I know of who has ever said that they didn't have enough time in the Santa Rita law library. These inmates walk out of the door at I believe 6:30 a.m., and they can go any place they want to all day. A lot of them come to the library.

Q: Ms. Joyner, you indicated that on Mondays, Wednesdays and Fridays I believe law clerks go to CDU?

A: Yes, in the evening.

Q: In the evening.

A: Yes.

Q: And they don't go on Saturdays and Sundays. Isn't that correct?

A: Correct.

Q: And you also indicated in your direct testimony that once a prisoner requests—who's in CDU requests legal materials, that gets to you the next day, and then the materials are sent the following day, except in the case of a weekend. So if things go smoothly, if a prisoner makes a request on a Thursday, he does not receive the materials until Monday.

A: No. If he makes it on Thursday, Friday morning the person who covers for me, my supervisor, picks the request up out of my box. They're processed, and go back Friday night.

Q: Are there instances—are there not instances where [117] prisoners do not receive their legal materials the next day?

A: Well yes. If the request was done on a Monday, I get it on a Tuesday. He's not going to get it back still till Wednesday night.

Q: How is it determined which of your law clerks go to CDU?

A: Actually right now it's inmate legal assistants who are going, and they have to have approval to travel. If you're an inmate legal assistant, and I have seven, you're eligible to go to CDU provided you have approval to travel.

Q: Isn't that correct that not all of your legal assistants have that approval to travel?

A: Correct.

Q: And therefore the decision whether or not they go to CDU is not determined by their skill level, but by security consideration?

A: Well one assumes that they have a certain amount—a certain skill level to even be an inmate legal assistant.

Q: But that was not my question. Once they are all legal assistants, the decision that they are selected to go to CDU is not determined by their skill. It's determined by their security consideration. Isn't that correct?

A: It's not that simple. If I had somebody who for some reason I didn't feel should or could go to CDU, I would have the—I wouldn't have to send him. As it happens, any of the seven that I have right now I feel would be very capable, and

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[119] MR. STRUCK: Could counsel continue reading through line 24 please?

MR. ADAMS: Certainly.

"Q: When you say give a good lead, what do you mean?"

"A: This area I think it may be in there, in there, things pertaining to whatever."

Any more?

MR. STRUCK: No, Your Honor.

BY MR. ADAMS:

Q: You've never gone to a convention before 1991, have you?

A: No.

Q: You indicated that you were aware that there are illiterate prisoners on the Santa Rita yard. Isn't that correct?

A: I don't know of any right now.

Q: But you are aware that there have been?

A: Yes, very few.

Q: How do you know that there are very few?

A: I work in the library. Well now I shouldn't say that, because the ones who are illiterate probably wouldn't come in the library. But any that we have, we have an excellent program, literacy program, and they hear about it, and people want to learn to read.

Q: Are these literacy classes in Spanish?

[120] A: Now that I don't know if they're offered in Spanish and English. I just don't know.

Q: Ms. Joyner, you indicated that there are legal assistants who work out of the library at Santa Rita. Do you evaluate the quality of their work product?

A: No. I don't look at any of the inmates' personal materials or lawsuits, not even the copying stuff, or in the process of copying.

Q: There's no requirement, is there, that legal assistants or law clerks must be bilingual, or that you must have a particular percentage of them who are bilingual by policy?

A: No, no.

Q: No further questions.

REDIRECT EXAMINATION

BY MR. STRUCK:

Q: Just a couple questions. At the beginning of cross examination you said you were inconsistent about giving the exam to the law clerks or the legal assistants. Could you explain maybe one more time why you're inconsistent with that?

A: A lot of times I really know what somebody can do. I've been maybe watching them for two years. At other times it'll be somebody who's brand new on the yard, and I have no indication of what they can do.

* * * *

[122] BY MR. STRUCK:

Q: On cross examination plaintiff's counsel went through some deposition testimony in which you stated that in the deposition you need a very good lead or a good lead. Could you explain what you mean by a good lead when—let me—

A: A subject. What's your issue.

Q: So all someone would have to do is just give you the subject of what they wanted?

A: Yes. And I have to say we've gotten a lot better at that, as we are more experienced, just like anybody does in anything that you do a lot of.

Q: So if someone just said I want some information on a 1983 action, is that a—do you consider that a good lead to get material for them, civil rights?

A: Yeah. I would investigate it a little bit, and say now let's see, 1983. Now what does that have to do with? And if I knew, then—or if the law clerks—that's another thing. The law clerks or the inmate legal assistants. I meet every single week with all the clerks who work in the library. In addition I meet every single week with all the inmate legal assistants. And if there are things that come up, I make notes all through the week. Does anybody know what does this mean? Who, what might he want? And then I would—if I didn't have an idea of some things to send over, I would ask * * *

* * * *

[133] THE WITNESS: Yes sir. Unless we go to refresher training, and then maybe some of them are there, yes.

THE COURT: And when you have meetings within the unit, like within your unit, how often do you meet with your fellow counselors?

THE WITNESS: Usually once a week.

THE COURT: And you go over problems and—

THE WITNESS: Yes.

THE COURT: —what's going on and all that.

THE WITNESS: Our supervisor brings up any issues he has, and then he allows us to bring up any issues we have.

THE COURT: By the way, I'm not trying to suggest that all the problems are with the administration. I realize you have problems with prisoners too. Some people, like anywhere else, you can't satisfy them—

THE WITNESS: Yeah.

THE COURT: —or they have problems of their own. But even there sometimes I assume you try to steer them, or get somebody to look—can you get a hold say of a psychiatrist or psychologist—

THE WITNESS: Yes sir.

THE COURT: —and tell them you think there's potential problems?

THE WITNESS: I usually refer them to the [134] psychologist. We have a psychologist on the yard, yes. I will refer them to that psychologist, and then it goes from there.

THE COURT: And you feel that you are free to do your job then, huh?

THE WITNESS: Yes sir.

THE COURT: Okay.

BY MR. STRUCK:

Q: You said when you come in in the morning you call the pod officer.

A: Uh huh.

Q: Is this something you do every morning when you come to work?

A: Yes sir.

Q: And how many days a week do you work?

A: Five.

Q: And you ask the pod officer if he has anyone for you?

A: I just tell him if he has anyone to send them up. Sometimes he does, sometimes he doesn't. If he doesn't, then I usually get up and walk down in the pod, and try to walk around both A and B pod, which are mine, and talk to the people that are there.

Q: And when you say that, you mean send them up for any reason, or—

A: Yes.

* * * *

[136] Q: When an inmate comes up to make a legal call, how do you verify that it's actually a legal call?

A: I ask them for the number and the name of the attorney, and then we go, depending on where it is, if it's in Tucson it's a 9 line, or if it's out of Tucson it's an 8 line. And then I will dial the number, and listen for the person to answer the phone. They usually answer it, Law Offices of so and so or whatever. And then I just tell them just a moment, and hand the phone to the inmate.

Q: Once you—well do you require that an inmate who's requesting a legal call give you—show you some kind of court deadline?

A: I don't, no.

Q: So any of your inmates can make a legal call regardless of the situation.

A: Yes sir.

Q: They don't have to tell you what the nature of the call is.

A: No sir.

Q: Once the inmate gets on the phone, what do you do?

A: If I have paperwork I work on it. I may have another inmate waiting outside the office. I'll walk out, talk to them to see what we need to—what I need to do next so I can [137] try to be one step ahead.

Q: So there are occasions when you'll stay in the room when they're making the call?

A: I may, yes, if I have paperwork to do.

Q: When you're in the room and they're making a call, do you listen to what's being said?

A: No I couldn't. I'm not speaking for everyone, just for me. But it's hard for me to tell on half a conversation what's going on anyway.

Q: Do you have to stay in the room?

A: No.

Q: If an inmate requested that you leave the room, would you?

A: Yes.

Q: If the inmate's attorney asked you to leave, would you?

A: Yes. Usually I don't talk to the attorney, but I would, yes.

Q: Do the other counselors that you work with have the same practice?

A: Yes.

THE COURT: Do you know if that's a written policy, what you just described?

THE WITNESS: We had one that was that way, and then we were told it was rescinded. I've never seen the rescinded policy, but it was rescinded. I know it was

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[139] Q: Have you ever walked out of your counselor's room when Melvin Coley was making a phone call?

A: Oh yes.

Q: Has there ever been an occasion where it took eight days between the time an inmate requested to make a phone call, and the time that he actually got the call?

A: No sir.

Q: What's the usual turnaround time on that?

A: Like I said, usually when they come up, if an inmate says I need to make a phone call, we do it right then. Because I never know what's going to happen the next day. So if I'll say well we'll make it tomorrow, and then I come in and something happens where I'm not down there, then you know, we can't do it. What I usually do is make it right then.

I have had guys when I was going out to go home say hey I need to make a call. I say okay, put your name on the list. We'll get you up there in the morning or as soon as possible, and we'll do it. * * *

* * * * *

[142] DIRECT EXAMINATION

BY MR. STRUCK:

Q: Would you state your name please?

A: Sue O—

THE COURT: Life has so many facets. Go on.

BY MR. STRUCK:

Q: And what is your occupation?

A: I'm a librarian I at ASPC Winslow.

Q: Are you stationed in any particular library at Winslow?

A: I'm in the Kaibab complex library.

Q: Could you tell us what your educational background is please?

A: I have a master's degree in secondary ed., business ed. I have a bachelor's degree in secondary education, business education with a minor in library science.

Q: What are your responsibilities as the librarian at the Kaibab Unit in Winslow?

A: I have to arrange the turnout, the daily turnouts. We have four turnouts a day. I have to schedule legal assistant meetings with lockdown inmates. I have to supervise the general library. I have to supervise the law clerks. I have to hand out indigent legal supplies. And there are other things that go along with that.

* * * *

[144] THE COURT: Well how do you know they wouldn't stipulate to that, what you're going to ask?

MR. STRUCK: They may stipulate to that, but it was only going to take a couple of questions.

THE COURT: Oh, okay, all right. Go ahead. It's only going to take a couple—

MR. STRUCK: Well I'm not going to spend—

THE COURT: We're going to talk about it longer than your questions. So go ahead.

BY MR. STRUCK:

Q: How does an inmate at the Kaibab law library get legal materials then?

A: He goes to the law counter, and asks one of my law clerks, and they'll get the materials for him.

Q: Do they have to make—give an exact citation to get that material?

A: Not necessarily. Some of them know, some don't.

Q: If they—they can make just a general request then to get materials?

A: Yes.

Q: Do you have any typewriters there at the Kaibab law library?

A: I think we have eight now.

Q: Electric typewriters?

* * * *

[148] THE COURT: Well I understand that. That's why I said if there's a prejudice about it. Well the problem is I've let you all do some of that too, and I don't want to get too hard nosed about it, because I think it's really probably a bigger storm than we need have. Why don't we just let it in, and subject to a motion to strike, and you can tell me when he's all through whether it's a big problem from you, and why it's a big problem, why you can't possibly meet it. Okay?

MR. FATHI: Thank you, Your Honor.

THE COURT: It may be less than you think it is. Go ahead.

BY MR. STRUCK:

Q: Ms. Ori, how does an inmate at the complex Detention Unit get access to the law library?

A: They send a kite or they send a request for legal assistance.

Q: And who gets that request?

A: I usually get the request.

Q: And what do you do with the request?

A: I read it, find out what they want. If it's—if they have a legal cite, and they just want copies made, I give it to one of my clerks to pull the documents and copy them, and [149] then we deliver them. If it's a request for

legal assistance, then I make arrangements with the lock-down unit as soon as I can to get them down there.

Q: About how long does it take after you get the request for you to fill it?

A: For copies?

Q: Yes.

A: Generally 24 hours.

Q: If it's a—if it's not a specific request, a general request, about how long does it take to fill that request?

A: If it isn't anything involved, the same amount of time.

Q: About how many inmates are on the Kaibab yard?

A: Both north and south yards there are about 800.

Q: And that law library serves both north and south yards?

A: Yes.

Q: What percentage of those inmates use the law libraries on a given month on the average?

A: Those that actually access it, for the month of December which was probably a typical month, they were about five percent.

Q: That's December of 1991?

A: 1991.

Q: About what percentage of the inmates at the Coronado yard utilize that law library?

A: It's much lower. It's only about two or three percent.

* * * *

JANUARY 16, 1992

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[13] THE COURT: Do you—then if I understand it, is your—the work you do limited—it isn't just limited to health matters is it?

THE WITNESS: Your Honor, no it's not. It's limited—I mean it involves planning, training. It involves the areas not only within human resources, but now in a number of other areas as executive assistant director.

THE COURT: What do you do if you can get a court decree such as the Gluth case, which is presumably is settled law at the moment. I don't know if it got an appeal going through the Supreme Court or not. I haven't checked it out or been interested in it one way or the other. But at least it's in effect now. Is that translated into a regulation that the Department enacts?

THE WITNESS: Your Honor, yes sir, it is. In fact that is a continuing process, as you're aware. Depending on how the case law changes, we have to look at what our policies are and then translate them into a policy for the department.

* * * *

[94] Q: Do you receive any reports regarding the average usage of the law libraries at ASPC Perryville?

A: Yes, I receive a report on a monthly basis from each unit.

Q: Do you—could you tell us what the average usage of the law libraries at Perryville are?

A: Okay. You want to do it by unit?

Q: Why don't we do it by unit.

A: Okay. Santa Maria unit, they're averaging ten over the last quarter.

Q: Ten per month?

A: Ten per day.

Q: Ten per day.

A: Right. I'm sorry.

Q: And the last quarter is from when to when?

A: That was looking at October through December.

Q: Okay. How about Santa Cruz?

A: Santa Cruz was 28 I believe.

Q: San Pedro?

A: San Pedro was running 21 I believe.

Q: And San Juan.

A: San Juan was higher. It was running 31 I believe it was on an average.

* * * *

JANUARY 27, 1992

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[33] THE WITNESS: No sir. This policy has, Gluth has not. All the provisions of Gluth have not been implemented.

THE COURT: Just for the areas covered by the injunction you mean?

THE WITNESS: Yes.

THE COURT: Is where they've been implemented?

THE WITNESS: Yes. See Gluth only had to do with the Central Unit in Florence.

THE COURT: No, but you were just describing that you wanted everything to be the same.

THE WITNESS: And that's why we developed this policy, Your Honor, so that each prison at least followed this policy.

THE COURT: Oh.

BY MR. STRUCK:

Q: 30211 doesn't have anything to do with training of inmate legal assistants does it?

A: No.

Q: 30211 identifies various standard law library hours that each law library should be open. Are you aware of that?

A: Yes.

Q: Do all the law libraries throughout the system follow the timeframe, I believe it's 7:00 a.m. to 10:00 p.m.?

A: No, they do not.

[34] Q: Why is that?

A: They have to, if they want an exception they have to have a written exception either by myself or Director Lewis. We have law libraries, the most classic is Yuma, they kept a record of their attendance. They were getting an average of three inmates a week requesting to go to the library and we thought it was a waste of staff time to have the library open from 7:00 in the

morning to 9:00 at night seven days a week when nobody was there. And we could accommodate the hours that inmates were required to use the library without having the library opened that number of hours. And we have some other institutions who have done the same thing. That the use did not justify keeping it open seven days a week, those hours.

Q: What type of documentation do you require before agreeing to not follow that particular policy?

A: We would require the attendance over a period of probably 60 days, a daily attendance, how many inmates requested, how many were scheduled in and some of those would have Saturday or Sunday where nobody would go to the legal library or request to go. So we did not require them to keep it open, but we made them keep accurate records and write us a justification why we should modify their hours or give them an exception.

* * * *

[39] BY MR. STRUCK:

Q: How are lockdown inmates afforded access to law library materials throughout the Arizona Department of Corrections?

A: In what prison jargon they use a kite system. They send in an inmate interview request to the legal library saying I want these types of materials or this, copy of this, whatever they want, and they do not have access to the legal library. It's through correspondence and then that material is sent back to their lockdown status from the legal library.

Q: Why are not lockdown inmates afforded actual physical access to the law libraries?

A: It just becomes a logistical nightmare to escort those people who, for whatever reason, have been placed in lockdown status either as a result of discipline, investigation or something and a judgment was made by somebody they needed to be locked away from the general population.

To move those people normally legal libraries are somewhere in the center of your prison, to move those people we have a policy that lockdown inmates normally are moved in restraints with two escorts. It becomes very staff intensive, disruptive to the institution to move those people across a yard when the inmates are out, whatever they're doing out, and with those time frames that are set in most prisons now, from 7:00 to 9:00, for libraries to be open for general population, we do not want to mix lockdown inmates [40] with general population inmates. And that's the basic reasons, the manpower, logistics and mixing those lockdown with general population inmates.

Q: And could you tell us what the reasons why you don't want to mix the lockdown inmates with the general population inmates?

A: Well people are in lockdown status for a variety of reasons. They are either discipline problem, maybe there because they've asked for protective custody and were waiting for a hearing or doing investigation, they may be in some danger in that yard. There's always the danger of contraband being passed and sent back into those lockdown facilities which are high security facilities. So there are a multitude of security reasons for not mixing general population and lockdown inmates. If you didn't want them isolated why would you lock them down, if you wanted them to have contact with general population inmates?

Q: What is the legal phone call policy within the Arizona Department of Corrections?

A: Well our official policy is that the primary means of communication between an inmate and his attorney should be by written communication. But we realize that inmates have deadlines or have issues that come up that they need to talk to their attorney. Our inmate phones are all recorded and monitored and posted that if they use those phones that phone [41] is going to be listened to and tape recorded. So if inmates want a legal phone call they have to go to their program officer and make arrangements over a state phone to call the attorney so

that it is not a recorded or monitored phone. We like the inmate to give some justification why he needs a phone call and cannot handle that business through the mail, simply because we're taking some staff time, a state phone line and those area the primary reasons for that.

Q: There's been some testimony that these phone calls take place in the CPO's office, offices, generally, is that correct?

A: Correctional Program Officer, yes that's the primary person responsible for setting up those legal phone calls.

Q: Is there any requirement that the CPO be in the room with the inmate when he makes the phone call?

A: Normally the requirement is that the CPO make the call, do the dialing and make sure the attorney's there and it is an attorney's office and then gives the phone to an inmate. There is no policy they should be in. We say they should not listen. Normally the problem is those are, those phone calls are placed in the program officer's office, who has a caseload of 70 or 80 inmates, probably has files and a lot of material in there on the desk, in and around that area, that he should not give another inmate access to. It's rather inconvenient to clear the desk and lock everything up for [42] somebody to have a 15 minute phone call. And I'm not so naive that I know that CPOs normally are not handing the phone to the inmate and they're sitting in there doing some work while this phone conversation goes on. They are told, you know, legal calls are none of your business, don't listen. I don't think they sit there to listen, but it happens.

Q: But again, there's no requirement? If a CPO wanted to get up and leave the room or was asked to leave the room by the inmate for confidentiality reasons he would do so?

A: I think in every case they probably would and look in through the window or something.

Q: What is the Department's indigency policy as far as obtaining legal materials?

A: Currently under this policy 30211 for all facilities except the Central Unit in Florence, it's set at \$22.00. And if for 30 day period of time they have not had \$22.00 on their books they qualify to get legal supplies at the state expense. If they've had over \$22.00 they're required to buy their own.

Q: How did the—where did the \$22.00 figure come from? How was that arrived at?

A: Doing some research, in about 1978 we had some business people do a survey of what they thought the necessities for an inmate were in the area of toilet articles and things and [43] what the prices were in the store and they arrived at a figure of \$12.00. That \$12.00 was in effect until this policy came out last year. At that point, this was being challenged as too low. We took the \$12.00 figure and had a budget analyst at the Joint Legislative Budget office run the inflation factor in the state of Arizona since 1978 and he arrived at the figure of \$22.00, I think and forty some cents. So that's how we arrived at \$22.00.

Q: Do you have any knowledge as far as what other states have as far as a dollar amount for an indigency obtaining legal supplies based on being an indigent?

A: We did last year a survey of some other states. Found that California is zero, if you have no funds on your books the state will furnish your legal supplies. Colorado is \$5.00 for a 30 day period. Nebraska is \$10.00 for a 30 day period. Nevada is \$10.00 for a 30 day period and Texas is \$5.00 for a 60 day period.

Q: In your position as the assistant director of adult institutions are you overall in charge of the disciplinary process and the classification process?

A: Yes I am.

* * * *

[50] Q: Going back to the indigency policy that we discussed before, do you have an opinion as to whether

\$22.00 is an appropriate level for an inmate to receive legal supplies as an indigent?

A: Yes I believe it's adequate. Whatever you set it there's a lot of manipulation of that process.

Q: What do you mean by that?

A: People receive funds from a variety of ways. In fact I'm in a long grievance of one now on death row who his is over only postage. He makes absolutely sure that he stays one dollar under that limit so the state pays his postage each week. But he gets money monthly, but he makes absolutely sure that it's one dollar under the standard. And people are going to do that. Whatever system you put in people are going to figure out the system and work it to their benefit and that's human nature. But it gets manipulated. In my professional judgment \$22.00 is an adequate standard.

THE COURT: I didn't quite follow the business of you get money in different ways. Isn't all money that's received, unless it's illicit or illegal, required to be deposited by the prisoner—

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

(Title Omitted in Printing)

**DEFENDANTS' OBJECTIONS TO IMPLEMENTATION
OF THE GLUTH INJUNCTION
IN PARTICULAR FACILITIES**

Defendants, pursuant to § 2(b) of the Court's November 25, 1992 Order, set forth the following specific objections to implementation of the injunction ordered in *Gluth v. Kansas* in particular facilities within the Arizona Department of Corrections.

A. *The Law Library.*

Although the Court's Order in *Casey* refers to appointing a Special Master to implement injunctive relief set forth in *Gluth* for each facility within the Arizona Department of Corrections, Defendants are concerned that the Court may have intended to apply the specifics of the *Gluth* Order to each unit within each facility. In other words, Defendants are concerned the Court and/or the Special Master may require that Defendants provide a separate law library at each unit at each facility within the Arizona Department of Corrections. At the present time, there is no law library at the Aspen DWI and Flamenco Units at ASPC-Phoenix, at the Papago DWI and Maricopa Units at ASPC-Douglas, and the Picacho Unit at ASPC-Florence.

Defendants presented evidence at trial that despite the fact there are no law libraries at these units, all inmates at these units are afforded sufficient access to law libraries at other units within the facility. If necessary, Defendants are prepared to present additional evidence supporting

the fact that a law library is not required at each particular unit. Finally, Defendants point out that there was no evidence presented by the Plaintiffs at trial that inmates at the units without a law library were not afforded sufficient access to a law library at another unit within the same facility.

B. *Schedule*

The *Gluth* Order requires that the law library shall be open for prisoner use at least twelve hours each day between the hours of 7:00 a.m. and 10:00 p.m. It also requires at minimum of four turn-outs to be scheduled each day providing prisoners a minimum of two hours of actual library use. Defendants submit that these requirements were put in place in the *Gluth* case because of the security level of the Central Unit at Florence. Defendants submit that at unit's housing Level 3 and lower custody inmates where the yards are "open" and inmates have access to the law library without submitting a request, it is not necessary for the law libraries to be open for as many hours as required in *Gluth*. These units include the Gila and Mohave Units at ASPC-Douglas; Cook, Rynning and East Units at ASPC-Eyman; South, North, and the Women's Division Units at ASPC-Florence; San Juan, Santa Cruz, and San Pedro Units at ASPC-Perryville; Rincon, Santa Rita, and Echo Units at ASPC-Tucson; ASP-Ft. Grant; Tonto and Graham Units at ASPC-Safford; ACW and Globe Units at ASPC-Phoenix; ASP-Yuma; and the Coronado and Apache Units at ASPC-Winslow.

Defendants submit that at these open yards, inmates have unrestricted access to the law libraries and are allowed well over ten hours a week of actual law library use. If Defendants are required to keep law libraries open at least twelve hours each day, as required by *Gluth*, additional unnecessary expenditure would be required for staffing. Defendants recommend that the requirements under § 1(b) of the *Gluth* Order be waived

for units with open yards. Defendants are prepared to present additional evidence if necessary to show that these inmates have sufficient access to a law library. Finally, Plaintiffs failed to present any evidence at trial that inmates at open yards were provided less than ten hours of law library use per week.

C. Request Procedure.

1. Open yard facilities.

At the open yard units previously listed, inmates are not required to request turn-outs. A requirement that units with open yards comply strictly to the schedule and request procedure requirements set forth in the *Gluth* Order would actually result in less library time for inmates at these facilities.

2. SMU.

At the Special Management Unit, where the vast majority of inmates housed are of the highest security level, it is impossible to ensure four turn-outs per day. Eighty percent of the inmates at the Special Management Unit must be brought, restrained, one at a time, to the law library. At the present time, they are able to access the law library greater than the minimum hours set forth in *Gluth*. Therefore, it is requested that SMU be allowed to continue to provide physical access to the law library in the manner they are presently operating.

At SMU, it is impossible to allow inmates to select their turn-out time. Presently, the SMU law library's average turn-out response time is within forty-eight hours. Turn-out requests to meet court deadlines are met daily. The current method of collecting requests for law library access at SMU is more efficient and workable at this facility than the manner ordered in *Gluth*.

I. "Check-Out" System.

Defendants object to allowing inmates direct access to the stacks. Pursuant to the *Gluth* Order, Defendants must document problems attributable to direct access to the stacks for particular inmates. Such a showing is virtually impossible, short of catching a particular inmate in the process of vandalizing legal materials.

Defendants submitted evidence at trial that vandalism does occur when inmates have direct access to the stacks. More importantly, the Plaintiffs presented no evidence that an inmate's ability to access the courts was impaired because of the denial of access to the stacks. The only evidence presented by the Plaintiffs at trials was from their expert, Jim Wilbur, who testified that it is more difficult to do legal research without browsing the shelves. Without evidence of inmates being unable to complete legal research because of the denial of access to the stacks, the Defendants should be able to continue with the "check-out" system. Complying with the *Gluth* Order at each unit would end up costing Defendants thousands of dollars for replacement of vandalized legal materials.

CONCLUSION

Defendants have submitted this Memorandum pursuant to this Court's Order of November 25, 1992. In addition to these objections, Defendants plan to submit additional objections and suggestions for modification pursuant to the Special Master's request by February 19, 1993. Defendants' objections and suggestions for modifications shall not be deemed a waiver of these Defendants' right to appeal prior rulings and orders of this Court or appeal from the subsequent final Order setting forth the injunctive relief regarding legal access issues.

DATED this 22nd day of January, 1993.

JONES, SKELTON & HOCHULI

By /s/ Daniel P. Struck
 EDWARD G. HOCHULI
 KATHLEEN L. WIENEKE
 DANIEL P. STRUCK
 2901 N. Central Ave., #800
 Phoenix, Arizona 85012
 Attorneys for Defendants

(Copy of Delivery List Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

 (Title Omitted in Printing)

**PLAINTIFFS' PROPOSED FINDINGS OF FACT
 AND CONCLUSIONS OF LAW**

* * * *

(2) Lockdown prisoners at Tucson are allowed to keep legal materials for only twenty-four hours. Because of this restriction, they tend to request only one or two books at a time. (Joyner test., p.109, lines 20-25, p.110, lines 4-12)

f. Even lockdown prisoners who are intelligent, literate and legally trained are unable to do legal research under a paging system that allows only one or two books at a time every couple of days. In addition, the legal assistants assigned to lockdown prisoners are not sufficiently skilled to assist them. (Wilber test., p.124, lines 6-13, 25, p.125, lines 1-22; McQuillen test., p.131, lines 10-15)

6. The vast majority of adult prisoners incarcerated by ADOC have no adequate means to research the law, crystalize their issues, present their papers in a meaningful fashion, and get them filed in court. (Wilber test., p.109, lines 14-25)

B. Staffing

1. Many of the law libraries are staffed by security staff and prisoner law clerks. (Stip., p.18, ¶ B; p.10, ¶¶ 4a, 5a, 6a and b, 7a and b; Exh. 217, pp.25, 43, 49, 65 and 67A; Keeney test., p.68, lines 15-25, p.69, lines 1-4, p.26, lines 3-8, p.33, lines 12-17, p.34, lines 9-22)

2. The prisoner legal assistants, law clerks, and civilian library staff are responsible for providing legal services to all prisoners in the facilities. However, law clerks and library staff can assist prisoners only by giving them the requested material from the law library stacks, whereas legal assistants can help them draft pleadings and do other legal work. (Wilber test., p.152, lines 8-16; Exh. 216 (ADC Internal Management Policy 302.11), p.1, ¶ 5.2, p.8, ¶ 6.12.1.3; Cathcart test., p.115, line 25, p.116, lines 1-3; Joyner test., p.114, lines 17 -20.

3 ADOC recognizes a need for additional librarians, but requests for additional staff have been rejected. (Keeney dep., p.69, lines 15-25, p.70, line 1; Lewis dep., p.26, lines 3-8)

4. There is a specific need for more library staff to assist in providing library services to prisoners in lock-down at the Perryville facility. (Cathcart dep., p.69, lines 16 - 20; Cathcart test., p.114, lines 7-17)

5. There is an insufficient number of legal assistants available to assist prisoners who need legal assistance. (Doe I test., p.258, lines 13-25, p.259, lines 1-10; Stip., p.20, ¶ 5b; Johns test., p.103, lines 24-25, p.104, lines 1-7; Exh. 250c; Exh. 250p; McQuillen test., p.123, lines 2-4, p.124, lines 10-19; Bishop test., p.111, lines 1-7)

6. In many facilities there are no Spanish-speaking legal assistants or law clerks. (Johns test., p.105, lines 23-25; p.106, lines 1-11; Friego test., p.75, lines 21-22; Joyner test., p.100, lines 5-16; Cathcart dep., p.13, lines 1-4; McQuillen test., p.115, lines 11-12; Stip., p.19, ¶ 3c; p.21, ¶ 9b; p.22, ¶¶ 11 a and b; p.23, ¶¶ 13 a and b, 14 a and b); Exh. 250c; Exh. 40t)

a. Prisoners must rely on Spanish-speaking prisoners who are not law clerks or legal assistants to assist them

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IN THE UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA

(Title Omitted in Printing)

DEFENDANTS' ADDITIONAL OBJECTIONS/ MODIFICATIONS TO IMPLEMENTATION OF THE GLUTH INJUNCTION TO PARTICULAR FACILITIES

Defendants, through counsel, pursuant to the Special Master's request, hereby submit the following additional objections and suggested modifications to the implementation of the *Gluth* Order to particular facilities. Defendants' objections and suggested modifications contained herein shall not be deemed a waiver of Defendants' right to appeal prior rulings, Findings of Fact and Conclusions of Law and Orders of this Court or appeal from the subsequent final order setting forth injunctive relief regarding legal access issues.

II. THE LEGAL ASSISTANT PROGRAM

(C) *Retention.*

Defendants suggest that a legal assistant must demonstrate at least minimal competence at one year *only* upon the receipt of complaints about his legal work.

(D) *Research Course.*

Defendants suggest the modification to the legal research and writing course to include a minimum of 25 hours of instruction provided in a four to six week period. Defendants recommend that the legal research course be offered to law clerks and legal assistants *only*. Even under this Court's liberal interpretation of *Bounds v.*

Smith, Defendants should not be required to offer the legal research course to inmates who have no intention of becoming a law clerk or a legal assistant. Finally, Defendants suggest that videotaped sessions of legal research courses be substituted for actual live classroom instruction. This modification is necessary to avoid the enormous cost of implementing such a legal research course ordered in *Gluth* at each unit in every facility within the state.¹

(F) *Operating Procedures.*

(1) Selecting a Legal Assistant.

Defendants request that a modification be made to allow Defendants the ability to participate fully in the selection process. Specifically, the *Gluth* Order only allows a denial of a request that a particular inmate act as another's legal assistant because of "mistake or ineligibility." However, the pairing of a particular legal assistant and inmate may create a threat to the safety and security of the institution.

For example, at the Special Management Unit, the majority of inmates are classified as I-5 and are sent to this facility because of their security status. There are, however, a few I-3s who are generally at SMU for a short period of time before transfer. Additionally, there are a few I-4 inmates whose institutional risk scores had recently been reduced and are awaiting transfer out of SMU. Defendants are concerned that I-5 inmates housed at SMU would utilize the legal assistant selection process as a manner in which to relay gang related information to inmates on other yards. It is imperative that Defendants be allowed to prevent the pairing of inmates at different institutional classification levels to control gang activity throughout the prison system.

¹ The estimated cost of implementing this legal training program system-wide is more fully set forth in Defendants' Motion for Stay filed on December 18, 1992, supplemented on December 31, 1992.

III. LEGAL SERVICES AND SUPPLIES.

(A) *Notary Service.*

Defendants request the requirement of providing notary services for legal papers and court related documents within twenty-four hours of a request be modified. Defendants should not be required to provide notary service to inmates on weekends or legal holidays.

(B) *Photocopying.*

Defendants request that this section be modified to allow the Defendants to increase the charge for per page copying upon a showing that five cents per page does not adequately cover the expense.

(C) *Typewriters.*

Defendants request this section be modified. While Defendants provide typewriters in all of their law libraries, they do not necessarily provide them at a ratio of 1:5 electric typewriters to law library capacity. There was no evidence presented by the Plaintiffs that Defendants did not provide an adequate number of typewriters. Clearly, there was no showing that the minimum requirement of 1:5 ratio of electric typewriters to law library capacity is required to provide inmates with adequate legal access to the courts. Therefore, Defendants request this section be modified and the last sentence of subsection 3(C) be removed.

IV. INDIGENT PRISONERS.

(E) *Response Procedure.*

Defendants request that this section be modified to include legal holidays within the reasons for a delay in processing a request.

V. LEGAL PHONE CALLS.

In response to the Court's Order that Defendants provide an unmonitored line to allow inmates to contact lawyers, Defendants suggest the following proposal. Each

unit contains a bank of phones that allow inmates to make calls outside of the facility. For security purposes, these lines are monitored. Defendants suggest that to comply with this Court's Order, one of the phones be used specifically for legal calls, with monitoring on that line to cease. Defendants request that they be allowed to take reasonable measures to ensure that the call being made is for legal purposes and that inmates found to be abusing the system be denied access to the legal phone.

VI. LAW LIBRARY COLLECTION.

Defendants continue to maintain that law library collections in their unit law libraries are more than adequate and exceed Constitutional requirements. Law libraries within the Arizona Department of Corrections do contain adequate self-help manuals. Additionally, many of the law libraries contain Pacific Reporters. Defendants, however, maintain that inmates can conduct adequate legal research without access to the Pacific Reporter.

DATED this 19th day of February, 1993.

JONES, SKELTON & HOCHULI

By s/ Daniel P. Struck
 EDWARD G. HOCHULI
 KATHLEEN L. WIENEKE
 DANIEL P. STRUCK
 2901 North Central Avenue
 Suite 800
 Phoenix, Arizona 85012
 Attorneys for Defendants

(Copy of Delivery List Omitted in Printing)

PLAINTIFFS' ACCESS TO COURT REMEDY FEBRUARY 19, 1993 PAGES 8-9

assistance on the most common legal issues. Defendants shall also prepare a Spanish language edition of the introductory guide. Defendants will review the proposed introductory guide and have an opportunity to make comments and/or suggest revisions. After approval by the Special Master, this guide shall be printed by defendants, and made available to all requesting prisoners while attending the law library.

G. Librarian

ADOC shall provide [at least] one full-time professionally trained supervisory librarian and adequate secretarial support for each facility complex with not more than four unit libraries or at least one full time librarian and adequate secretarial support for a law library which has no supervising librarian. Each unit law library, within a facility complex which has no unit law librarian, shall be staffed by at least one full time civilian employee who has completed the legal research course described in paragraph I.D. Subject to identified security needs, the librarian will be responsible for the policies and procedures in the law library and for ensuring adequate access to the courts for ADOC prisoners. The supervising librarian shall possess a library science degree, law degree, or paralegal degree. Librarians who have no prior experience or training in the use and administration of a library must complete an organized in-service legal training program developed by a person with a library science degree. Librarians who have not obtained a paralegal certificate or law degree must, in addition to the requirement that they be professionally trained, complete the legal research course offered to legal assistants. However, merely completing the legal research course for legal assistants will not, by itself, qualify a person to be a law librarian. The librarians shall be paid the standard salary

equal to that of other ADOC law librarians with additional amounts or incentives if necessitated by particular conditions at a given law library. The Special Master will work with ADOC on securing applicants, including contacting schools and professional organizations. The Court will consider modification of this requirement if, despite good faith efforts, a qualified candidate has not accepted a given position after two fiscal years. Non-professionally trained ADOC staff who are assigned to the law library to provide prisoners assistance in the use of the law library, shall complete either the legal research course for legal assistants.

H. Conduct

ADOC may require prisoners to remain in the law library for the full turnout period. After being warned when possible, a prisoner may be involuntarily removed from the library if he or she continues to create a threat to safety or security, or to directly interfere with others' use of the library. Within 48 hours of removal, the prisoner must be provided written notice of the reasons and factual basis for this decision, with a copy held for the Special Master. Non-intrusive actions, including reasonable

* * * *

IN THE UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA

(Title Omitted in Printing)

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' PROPOSED MODIFICATIONS

Defendants, through counsel, pursuant to the Special Master's request, hereby submit the following objections to Plaintiffs' proposed modifications to the *Gluth* order. Defendants address only the modifications proposed by Plaintiffs at this time. These objections shall not be deemed a waiver of Defendants' right to appeal any prior rulings or orders of the court as well as any subsequent orders of this Court.

II. THE LAW LIBRARY

C. Request Procedure

Defendants object to Plaintiffs' proposed language change in paragraph 2 of page 3. Plaintiffs propose to change the sentence regarding library turnouts from "this may be one day if necessary to meet a legal deadline" to, "this **shall** be **only** one day if necessary to meet a legal deadline." The proposed language change does not provide for situations where accommodating this request would simply be impossible due to staffing or scheduling difficulties. It should be the burden of the inmate to get to the library and complete his research in a timely manner.

D. *Response Procedure*

Defendants object to the Plaintiffs' suggested modification to this section which would require that each law library be equipped with a computer that is used primarily for scheduling law library turnouts. Defendants have objected to the necessity for utilizing a computer absent a showing of a scheduling problem at that particular law library. Additionally, law libraries on open yards where turnouts are not required should not have to be equipped with a computer for this purpose.

E. *Law Clerks*

Defendants object to the Plaintiffs' requested modification that law clerks shall be permitted to assist prisoners in drafting pleadings as long as this assistance does not interfere with the performance of other law clerk duties and responsibilities.

First, the *Gluth* order already requires that Defendants maintain a sufficient number of inmate legal assistants. If the Defendants are required to have a sufficient number of legal assistants to provide inmates with access to the courts, it should not be necessary for Defendants to permit law clerks to assist prisoners in drafting pleadings. Second, law clerks are paid by the Defendants for their services. As many, if not the majority of inmate lawsuits are directed against the State, it would be ridiculous to order the State to pay for the preparation of lawsuits against itself. Third, it would be difficult to recruit legal assistants, because inmates would more likely want to be a paid law clerk who can perform legal assistant functions. Finally, it is unlikely that an inmate law clerk would be able to perform legal assistant functions without having it interfere with the performance of other law clerk duties and responsibilities.

Defendants also object to the Plaintiffs' proposed modification which would impose the current ratio of prisoner law library clerks to prisoner population at the Central

Unit to all law libraries throughout the Arizona Department of Corrections. Obviously, if law library usage at a particular facility is less than usage at the Central law library, Defendants should not be required to conform with the ratio established at the Central Unit. The ratio of inmates using the law library at the Central Unit facility will be much higher than, for example, the ratio of inmates that utilize the law library at the women's division in Florence. Additionally, Defendants maintain that the decision regarding the necessary amount of law library clerks should be one left to the discretion of the librarian or staff member in charge of a particular library. Finally, there was no evidence in this case that there was a deficient number of law library clerks at any of the law libraries.

F. *Research Guide*

Defendants object to the Plaintiffs' proposed modification requiring them to prepare a Spanish language edition of an introductory guide. Defendants anticipate that the cost of translating the introductory guide will be excessive, and certainly not necessary in light of the fact that Defendants most likely will be ordered to provide Spanish speaking legal clerks and legal assistants for Spanish speaking inmates.

G. *Librarian*

Defendants object to Plaintiffs' proposed modifications throughout subsection G as being incomprehensible. Defendants submit that there was no showing by the Plaintiffs in this case that there were deficiencies resulting from the current law library staffing.

I. *"Check-Out" System*

Defendants object to the Plaintiffs' proposed addition to the check-out system granting all inmates access to the stacks unless there is a specific documented problem

involving that particular prisoner justifying the denial of access. Plaintiffs' presented no evidence that an inmate was denied access to the courts as a result of not being able to directly access the stacks. Additionally, Plaintiffs' proposal is unworkable. It would be virtually impossible for Defendants to pinpoint exactly which inmates were vandalizing books in the law libraries.

K. *Paging System*

Defendants object to Plaintiffs' proposed modification to increase the number of books provided to inmates who have no access to the law library. Such a provision will result in delays in other inmates' requests to obtain legal materials.

L. *Law Library Inventory*

At the present time, Defendants already have sufficient law library inventories. Plaintiffs' own expert, James Wilber, upon reviewing Defendants' law library at Perryville, stated that it was the best prison law library he had ever seen.

Although most of the law libraries already have *Prisoner's Self-Help Litigation Manual* and *Post-Conviction Remedies* by Manville, there was no showing by the Plaintiffs that failure to have any of the additional editions impeded inmates access to the courts. Certainly, Defendants should not have to provide inmates with *Immigration Law and Crimes*.

Plaintiffs made no showing that Pacific Second Digests and Reporters are necessary. Should the Special Master require Pacific Second Digests and Reporters, the libraries should be allowed to discontinue the Arizona Reporters and Digest, due to the fact that all the cases in the Arizona Reporters are also included in Pacific Second Reporters.

II. THE LEGAL ASSISTANT PROGRAM

B. *Number*

Defendants object to Plaintiffs' proposed modification to subsection B, "ADOC shall ensure that prisoners having meaningful access to bilingual legal assistants." This language is unnecessary and is already implicit in the *Gluth* order.

C. *Retention*

Defendants object to the Plaintiffs' modifications to this section. Supervising the work of legal assistants on a continuing basis would require several full-time legal research instructors. The work of a legal assistant need only be supervised or reviewed upon specific complaints about that particular legal assistant's work.

Defendants object to Plaintiffs' request for modification seeking a limitation on when a prisoner's legal assistant status may be terminated. According to the Plaintiffs, an inmate legal assistant can be guilty of a serious crime or infraction within the prison, and would still be allowed to continue as a legal assistant as long as that crime didn't have anything to do with his or her work as a legal assistant. Surely, Defendants should not be required to keep an inmate on as a legal assistant who was involved in a stabbing of another inmate. This modification is an undue restriction on the Defendants' right to administer prisons in a fashion necessary to maintain security and safety of the inmates, Defendants' employees and the general public.

D. *Research Course*

Defendants should only be required to offer the legal research and writing course for inmates interested in becoming legal assistants. To force the Defendants to offer the legal research and writing course for any interested inmate clearly goes beyond the scope of what is required by the Constitution.

Defendants object to the inclusion of covering immigration law in the legal research course, for reasons previously stated.

F. *Operating Procedures*

2. *Meetings*

Defendants object to the Plaintiffs' requested modification that an inmate in any custody level shall request a meeting with his or her legal assistant. Defendants should have the right to limit specific requests for security reasons. For example, an inmate who was classified as an I-5 should not be able to request an inmate classified as an I-3 to be his legal assistant.

Defendants also object to the Plaintiffs' proposed modification that an appropriate request procedure be developed for illiterate and non-English speaking prisoners. Plaintiffs failed to present any evidence that illiterate or non-English speaking prisoners inmates were having difficulty requesting a legal assistant.

Defendants also object to Plaintiffs shortening the amount of time in which the Defendants must arrange a meeting to within 48 hours of a request.

Defendants object to the remainder of Plaintiffs' requested modifications of this section as being unworkable for security reasons. Defendants should not be forced to allow face to face meetings, especially in high security level facilities and lockdown units. Additionally, Defendants should be able to terminate these meetings if it is evident that the meeting has nothing to do with a legal matter.

5. *Disclosure*

Defendants object to Plaintiffs' suggested modification that Defendants must first go to the Special Master before asking a legal assistant to reveal information derived from the inmate legal assistant relationship when prompted

by serious concern of institutional safety or security. This requirement puts the Special Master in the role of a prison administrator. There is no privilege attached to conversations between a legal assistant and inmate. Therefore, there is no reason why Defendants should need to get the approval of the Special Master before seeking information from the legal assistant when there is a serious concern of institutional safety or security. It is also likely that such a requirement would impede the ability of the Defendants to obtain this information on a timely basis, which would be necessary in the vast majority of instances.

Defendants also object to the Plaintiffs' suggested modification that meetings and discussions between an inmate and his or her legal assistant should not be arbitrarily terminated based on eavesdropping. If staff members inadvertently overhear conversations that prompt a concern of institutional safety or security or that clearly have nothing to do with legal related matters, staff members should be able to terminate the meeting.

III. LEGAL SERVICES AND SUPPLIES

B. *Photocopying*

Defendants object to the proposed modification that a sign be posted in the law library near the photocopier which states that the reading of a prisoner's confidential legal papers is impermissible and will be punished. The requirement that Defendants advise individuals involved in photocopying not to read materials is sufficient. Posting a sign to the effect that reading confidential legal papers will be punished will only create numerous disputes and problems and is not necessary.

V. LEGAL TELEPHONE CALLS

Defendants object to Plaintiffs' proposed modification regarding legal telephone calls. Plaintiffs' request that inmates be provided unhindered access to telephones for

legal calls with virtually no restriction will only create numerous problems and will place an extreme burden on the Defendants.

There is no reason why the vast majority of communication between inmates and their attorneys cannot be conducted by mail. Pursuant to Plaintiffs' procedure, an inmate can request as many legal telephone calls as they want with virtually no restrictions. If Plaintiffs' modification is ordered, inmates will be able to abuse this system in many ways, without the Defendants having any recourse.

DATED this 19th day of March, 1993.

JONES, SKELTON & HOCHULI

By /s/ Daniel P. Struck
 EDWARD G. HOCHULI
 KATHLEEN L. WIENEKE
 DANIEL P. STRUCK
 2901 North Central Avenue
 Suite 800
 Phoenix, Arizona 85012
 Attorneys for Defendants

(Copy of Delivery List Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

 (Title Omitted in Printing)

**DEFENDANTS' ADDITIONAL OBJECTIONS
 TO PLAINTIFFS' PROPOSED MODIFICATIONS**

Pursuant to the Special Master's request, Defendants, through counsel, submit additional objections and modifications regarding implementing the *Gluth* order at various units. Defendants' objections, suggestions or modifications shall not be deemed a waiver of these Defendants' right to appeal prior rulings and orders of the court or appeal from the subsequent final order setting forth the injunctive relief regarding legal access issues.

II. THE LEGAL ASSISTANT PROGRAM

E. Responsibilities

Defendants object to allowing inmate legal assistants to meet face to face with other inmates at the following units; SMU, CB-6, Alhambra, Perryville Santa Maria SMA and all lockdown units. Defendants object to a requirement of face to face meetings between legal assistants and inmates for security reasons. Additionally, Defendants submit that meetings between prisoners and legal assistants which occur with a barrier are just as productive as face to face meetings. Finally, Defendants submit that inmates do not have a constitutional right to have a face to face meeting with their inmate legal assistant.

V. LEGAL TELEPHONE CALLS

Defendants submit that inmates be allowed to request a maximum of two (2) twenty (20) minute phone calls per week to an attorney or attorney's representative for

the purposes of seeking legal assistance. Defendants submit that a call that is uncompleted will not be counted as one of the designated calls per week.

DATED this 28th day of April, 1993.

JONES, SKELTON & HOCHULI

By /s/ Daniel P. Struck
 EDWARD G. HOCHULI
 KATHLEEN L. WIENEKE
 DANIEL P. STRUCK
 2901 North Central Avenue
 Suite 800
 Phoenix, Arizona 85012
 Attorneys for Defendants

(Copy of Delivery List Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

 (Title Omitted in Printing)

ORDER

At the request of the Special Master this Court has determined that a clarification of its referral order is necessary in this case. Defendants have objected to a number of the fees and expenses billed by the Assistant Special Master. Specifically, the Special Master has forwarded to the Court a copy of a letter from defense counsel dated April 20, 1993 raising specific objections to payment. Having reviewed the letter the Court has determined that it is necessary to clarify the procedure for the defendants to object to billing of the Special Master and Assistant Special Master. The Court has also determined that it is necessary to clarify some specifics regarding

* * * *

The Court expects the Special Master to bill the defendants for local office space based on the history of the Special Master and his actions in the *Gluth* case. When the Court first appointed the Special Master, he discussed the provision of a local office with defense counsel in *Gluth*. The Special Master took the position that the defendants had the responsibility of providing office space and the Special Master and Assistant Attorney General worked out a compromise that the Special Master would pay a portion of the office space out of his hourly rate.³

³ At that time, the Assistant Special Master was not a practicing attorney. Although she is now a practicing attorney, her practice time is greatly limited by this case.

Thus, the defendants have always paid a portion of the office space. The Court considers this to be a "necessary and proper" expense under Federal Rule of Civil Procedure 53 because the Special Master requires a local office. The Court also notes that the volume of paperwork and documents provided to the Special Master require additional office space. The Court further notes that it considered the fact that the Assistant Special Master would be reimbursed for a portion of her office expense when setting her hourly fee at a rate below the state contract attorney hourly fee.

Second, the defendants make an objection that the Assistant Special Master spent what they consider to be an "excessive amount of time" interviewing inmates at facilities. In particular, the defendants object to the Assistant Special Master interviewing two inmates at the Rynning Unit for a period of three hours. Yet, defendants should be aware that, due to security concerns, the

* * * *

Within 20 days of the Special and Assistant Special Master's submission of billing, the defendants may object to the Special or Assistant Special Master's expenses or costs. If the defendants and Special Master cannot resolve the dispute, the defendants may submit a written objection to the Court setting forth the specific cost or expense and their objection to that cost or expense. The Special Master may respond to the written objection within 20 days of the filing of the defendants' objection.

DATED this 27 day of May, 1993.

/s/ C.A. Muecke
C.A. MUECKE
U.S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

(Title Omitted in Printing)

**DEFENDANTS' OBJECTIONS TO THE
SPECIAL MASTER'S PROPOSED ORDER**

Defendants, through counsel, hereby submit the following objections to the Special Master's proposed order submitted on July 12, 1993. Defendants' objections shall not be deemed a waiver of these Defendants' right to appeal prior rulings and orders of this Court or appeal from the subsequent final order setting forth the injunctive relief regarding legal access issues.

I. THE LAW LIBRARIES

In the proposed order, the Special Master references the "existing Aspen DWI and Florence units of ASPC-Phoenix". Defendants suspect that the Special Master is referring to the Flamenco unit at ASPC-Phoenix.

B. SCHEDULE

1. Library Hours

a. Facilities that do not require advance requests for a library turn-out:

The Defendants object to the requirement that the law library be open for inmate use at least four hours each week night between 5:00 p.m. and 10 p.m. At the majority of the Defendants' facilities, a final count is conducted and the yards are closed by 8:30 p.m. Defendants recommend that the libraries be open no later than 8:00 p.m. This would still allow inmates that are working

during the day to attend the library at least ten hours per week. A requirement that the law libraries stay open after 8:00 p.m. would require additional staffing and law clerks at all facilities. Defendants also object to requiring the law libraries to be open on legal holidays.

b. Facilities that require advance requests for a library turn-out:

Defendants again object to requiring the law library to be open after 8:00 p.m. For example, the law library at CB6 currently satisfies all inmates requests for library time by 3:00 p.m. Therefore, it should not be necessary for that library to remain open until the minimum of 9:00 p.m. as set forth in the proposed order. Defendants also object to requiring the law library be open on legal holidays.

2. Prisoner Use

Defendants object to the first sentence of the proposed order. In an open yard, if an inmate were to arrive at the law library ½ hour before closing, he or she could demand that pursuant to the order, he or she be allowed to stay for a minimum of 2 hours of actual library use. Defendants suggest that the first sentence be changed to "in all facilities that require advanced requests for library turn-out, each visit or turnout must provide the prisoner a minimum of two hours of actual library use."

3. Notice

Defendants object to inclusion of this section in the order. It is not clear why the Defendants have to make known to all prisoners the specific schedule of important activities at the facility for the next month, including visiting hours, classes, religious services and field turnouts for each housing area or how this relates to legal access. Additionally, Defendants object to the order providing that the Defendants give the Special Master a schedule

of ongoing activities that might conflict with law library access, including work assignments, classes, recreation, religious services, commissary, visiting and meals. Because the Special Master has already proposed a law library schedule, it is unclear why this information is needed.

C. ADVANCE REQUEST PROCEDURE

Defendants object to prisoners being responsible for selecting their law library turnouts at CB6 and SMU. Because of the security concerns unique to these maximum level facilities, it is necessary that the staff schedule the law library turnouts.

D. ADVANCE RESPONSE PROCEDURE

Defendants object to requiring that the law library in CB6 be equipped with a computer. Because of the low number of inmates that actually use the library at CB6, a computer is not necessary for scheduling turnouts. Additionally, because of security concerns, the inmates at SMU and CB6 cannot be given notice of scheduled law library turnouts. Finally, CB6 and SMU request that the current scheduling be left intact, as there are virtually no complaints regarding the scheduling at CB6 and there have been no complaints regarding the scheduling system at SMU.

E. LAW CLERKS

Defendants object to the requirement that at least two law clerks be assigned for each turnout. There is not need for two law clerks in small unit law libraries such as the Florence Women's Division or in CB6. Additionally, because of the small number of inmates that use the CB6 law library or the SMU library at one time, it is not necessary that two clerks be present at each turnout.

F. RESEARCH GUIDE

Defendants propose that they be allowed to prepare the introductory guide to the use of the law library, with the Special Master having an opportunity to comment on the proposed introductory guide and be allowed final approval.

G. LIBRARIAN

Defendants object to the requirement that each law library provide one full-time professionally trained librarian. Defendants suggest that a librarian at each library is not necessary and recommends that a minimum of one law librarian be provided for every three law libraries.

Defendants also object to the requirement that each ADOC complex employ a professionally trained librarian with a law degree or a paralegal degree. Defendants have a difficult enough time filling librarian positions in facilities, without having to meet this requirement. The prospects of even hiring one librarian with these qualifications are slim indeed. Not only will it be impossible to find librarians with these qualifications, in light of the ordered legal assistant program, such a requirement is not necessary.

H. CONDUCT

Defendants object to the Special Master's proposal that inmates not be required to remain in the law library for a full turnout when they are attending the library solely for supplies, notary or copy services for the reason that Defendants lack appropriate numbers of security staff to accommodate this proposal.

I. "CHECK OUT" SYSTEM

Defendants object to the apparent requirement that prisoners in maximum security institutions be denied direct access only if ADOC documents vandalism or losses

resulting from such access in that institution. Obviously, for security concerns, inmates at SMU and CB6 cannot be allowed access to the stacks. Although the Defendants believe that the Special Master did not intend these facilities to be included, it is not clear. Defendants also object to being required to allow inmates in minimum or medium security facilities direct access to the stacks when there is documented vandalism and loss resulting from this access. As there was no evidence from inmates at the trial that there was any denial of access to the courts as a result of the check-out system, Defendants request that they be allowed to continue with this system, especially in light of the documented vandalism that occurred as a result of the direct access to the stacks.

K. PAGING SYSTEM

Defendants object to requiring a daily exchange between prisoners and a law library representative regarding research. Due to staffing problems, such a daily exchange is impossible. Defendants suggest that this exchange take place a minimum of every 48 hours.

L. INVENTORY

Defendants object to the requirement of Pacific Reporters and Digests. In the alternative, Defendants suggest that they only be required to provide an up-to-date set of Pacific Second Reporters and Digest and they not be required to provide Pacific First Reporters. Defendants also recommend that each facility maintain a set of Pacific Reporters that could be utilized by inmates at the unit law libraries if needed. Finally, Defendants object to having to provide any materials regarding immigration practice, as no case interpreting *Bounds* requires that a prison law library contain these types of materials.

II. THE LEGAL ASSISTANCE PROGRAM

Defendants object to the continuing nature of the Legal Assistance Program. Defendants submit that once a specific number of legal assistants have completed the training program, Defendants should be able to suspend that program. Defendants submit that providing a legal assistant training program every six months is unnecessary in achieving the Court's goal of providing trained legal assistants to inmates for access to the courts. Pursuant to this order, the Defendants are required to run training programs every six months, whether any inmates are interested in taking the course or not. Defendants should not have to continue offering the course if there are sufficient numbers of legal assistants available at that unit to provide inmates with access to the courts.

F. OPERATING PROCEDURES

1. *Selecting a Legal Assistant*

Defendants object to the last portion of the first sentence of this section "this process shall not require information about the legal concerns" for the reason that the meaning of this sentence is unclear.

2. *Meetings*

Defendants object to the requirement that inmates be allowed to meet with their legal assistant for a minimum of three hours per week. This requirement is impossible at the SMU and CB6 due to staffing problems and lack of available space.

5. *Disclosure*

Defendants object to the inclusion of "monitoring" with regard to meetings and discussions between a prisoner and his or her legal assistant. Obviously, the Defendants need to monitor these meetings. Defendants are able to moni-

tor these meetings without listening to the discussions between the prisoner and his legal assistant.

I. TELEPHONE CALLS

Defendants object to the weekly minimum of three 20-minutes calls allowed inmates, which would require additional staff. Defendants also want to make clear that although inmates will be allowed phone calls, the Defendants will not pay for them. Inmates should either call collect or have to pay for the call.

Defendants also object to the requirement that brief incoming telephone messages from an attorney representative be timely delivered to inmates. Defendants have enough of a problem with staffing shortages without having to worry about delivering messages to inmates when other methods of communication are available.

III. LEGAL SERVICES AND SUPPLIES

B. PHOTOCOPYING

Currently, the cost of making a copy is approximately eight cents per page. Defendants request that this order provide for a mechanism by which the reasonable rate for copying service be increased on a periodic basis. Obviously, it is difficult to determine what the cost of making a copy will be in twenty years. Defendants should not be stuck with being able to charge only five cents per page.

C. TYPEWRITERS

Defendants object to the requirement that inmates be allowed to possess a storage memory for their typewriters for security reasons. Defendants also object to the requirement that they provide typewriters for inmate use. Additionally, Defendants object to the requirement that the typewriters be covered by a service contract or other professional repair system. For example, due to the cost of a service contract, it may be more cost-effective to pur-

chase a new typewriter rather than maintain a service contract.

IV. INDIGENT PRISONERS

B. SUPPLIES AND SERVICES

1. Supplies

Defendants object to having to provide a minimum amount of items for inmates each week. Certain items, such as pencils and pens, can be exchanged by the inmate when a new one is needed. Additionally, Defendants object to being required to provide one typewriter ribbon and ko-rec-type each week. First, it is unlikely that these items will need to be replaced on a weekly basis. Second, it is unreasonable to require that the Defendants keep in stock the numerous varieties of typewriter ribbon and ko-rec-type on the market.

2. Postage

Defendants object to the requirement that postage be provided for inmate letters to "organizations." Defendants recommend that this requirement be changed to "legal organizations."

DATED this 13th day of August, 1993.

JONES, SKELTON & HOCHULI

By /s/ Daniel P. Struck
EDWARD G. HOCHULI
KATHLEEN L. WIENEKE
DANIEL P. STRUCK
2901 North Central Avenue
Suite 800
Phoenix, Arizona 85012
Attorneys for Defendants

(Copy of Delivery List Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

(Title Omitted in Printing)

ORDER

Having considered plaintiffs' motion to dismiss defendants' objections dated August 13, 1993, the Court concludes as follows:

Background

Plaintiffs have moved to dismiss defendants objections filed August 13, 1993 to the Special Master's proposed order arguing that they were filed in contravention of the Court's November 25, 1992 order. Defendants respond that they have complied with the November 25, 1992 order.

On November 25, 1992, this Court issued an order in this case setting forth the duties of the Special Master and the parties in formulating and implementing the permanent injunction. The Order of

* * * *

are not untimely because they were filed after the ten-day period.

However, to the extent that the defendants raise objections in those final objections that were not raised to the Special Master on January 22, February 19, March 19, April 28, 1993 or at the meeting with the Special Master on April 7, 1993, the Special Master need not consider those objections in forming the proposed final injunction in this case. The parties were allowed over six months to file written objections to implementation of *Gluth* statewide. Defendants have had ample opportunities and time to request proposed changes to the *Gluth* injunction. The

special master's proposed order contains no proposals that could not have been anticipated or were not contemplated in the April 7, 1993 meeting with the Special Master. For any new objection raised for the first time after the proposed injunction, the Special Master has the discretion to consider the new objection at this time or during implementation of the permanent injunction. The Special Master will be monitoring implementation of the permanent injunction. As such, this Court is willing to allow modifications for documented problems that occur during implementation. Thus, if there is evidence that a particular portion of the injunction should be modified, the Special Master has the discretion to suggest the modification to the Court. This Court is willing to make changes to accommodate the defendants if good reasons exist for making the changes. However, such changes will not be made based on unsupported allegations.

Plaintiffs also argue that defendants provide no evidence to support their conclusions that are the basis for their objections. Defendants respond that they are not required to provide documents to support their objections. However, the Order of November 25, 1992 specifically provides that:

No later than January 22, 1993, the parties shall file written objections, if any, setting forth their objections to implementation of the *Gluth* injunction in particular facilities. The objections shall set forth the particular provisions of the injunction to which they object; propose modifications to the injunction and set forth the particular circumstances that require modification of the injunction. *The particular needs or circumstances must be documented and supported by evidence.*

Order of November 25, 1992 (emphasis added).

This Court is willing to provide modifications from the *Gluth* order for particular prison units based on differ-

ences in those units or for other considerations raised by defendants. However, the particular needs or circumstances must be documented and supported by evidence. This Court will not modify the *Gluth* injunction based only on allegations that are not supported by evidence.

IT IS THEREFORE ORDERED THAT the Plaintiffs' motion to Dismiss Objections (filed September 7, 1993) is denied. However, in his preparation of the final injunction, the Special Master has the discretion to disregard any objections or claims that were made for the first time in the final objections filed on August 13, 1993 and any objections that are not supported by evidence.

DATED this 27th day of September, 1993.

/s/ C. A. Muecke
C. A. MUECKE
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Title Omitted in Printing)

EXCERPTED DEPOSITION OF
STARLA JOY CATHCART

Perryville, Arizona

January 31, 1991

* * * *

[27] A: They weren't—not any definite plans, other than on-the-job training on each unit.

Q: Do you have a plan for on-the-job training?

A: Whether the people above me have or not, I don't know.

Q: Do any of your current law clerks have any prior experience being law clerks?

A: I know that one at San Juan has previously worked in a law library at another unit, or one of the other complexes, but I don't remember which one. And I don't know about the others.

Q: Do you know how many legal assistants there are available to prisoners at the Perryville facility?

A: No, I don't know.

Q: Do you know whether or not legal assistants are provided any training?

A: I don't know.

Q: Do you know what the procedure is for a locked-down prisoner to obtain legal material?

A: They make the request. When the request gets to me, then I fill out a form saying what I'm sending to them, and either I or one of the other librarians takes it to them. And then they get it for 24 hours, if it's a book. Legal supplies or forms and stuff, we send for them to keep.

Q: Do you know how long it takes for the request to [28] get to you?

A: It varies.

Q: From when to when?

A: Well, I can get it the same day or it may be weeks.

Q: Do you know what accounts for the delay of a week or weeks?

A: Whoever they gave it to just doesn't pass it on, I guess. I have no idea what happens.

Q: How do you know that there is a delay?

A: The inmate tells me. Or I may see it on the—if there is a date on the request I may, you know, tell that way that there's been a delay.

Q: How specific must the request be in order for it to be filled?

A: I just have to have an idea of what they want. They don't have to say, "I want such-and-such a book." Although, you know, it helps if they do, because then I can give them that book. But if they just, like they may say, "I want a book on plea bargains or I may want a book on 1983," or something like this, you know, you know what they want, so I get it for them.

Q: Does someone daily go over to the lockdown unit to obtain requests from prisoners, or is someone sent over there only when a request comes?

[29] MR. CULLAN: Object to foundation.

If you know, you can answer the question.

A: I don't really know what their visiting schedules are, but the requests a lot of times come through the counselors. But I don't know what their visiting schedule is.

Q: Who is responsible for filling the request, actually taking the legal materials over to the lockdown unit? Who does that?

A: As I say, it's either myself or one of the other librarians.

Q: What's the maximum amount of material per request a prisoner can obtain?

A. We have been limiting it to one book at a time when it's from Complex. Because of the fact, mostly because the other librarians have other books that they have to carry and it makes, you know, if you have a bunch of them, then it's too big of a load. If there is only one request and it's one person requesting, and it's something that goes together, you know, two books, then they go together.

Q. And the prisoner is allowed to keep that material for a maximum of 24 hours per request?

A. Yes.

* * * *

[31] MR. CULLAN: Object. It calls for speculation. You can answer it, if you know

A. They haven't told me anything to the contrary. If I get a request I don't understand, then if I can, I go talk to the prisoner or I try to get it clarified.

Q. BY MR. ADAMS: Do you know how long a prisoner has to be in lockdown in order to be eligible to receive legal material?

MR. CULLAN: Object. Lack of foundation.

You can answer, if you know.

A. I believe the policy says two weeks, that they have—if they are going to be locked down more than two weeks, then they have to have access.

Q. BY MR. ADAMS: Do you know whether or not in order to receive legal assistance, not simply books, legal materials, but assistance from an assistant, whether or not the prisoner has to have a pending disciplinary charge?

MR. CULLAN: I object to foundation.

A. I don't know anything about the legal assistant program.

Q. BY MR. ADAMS: Who supervises legal assistants?

MR. CULLAN: Object on foundation.

A. It's—all I know, it's done on the units. That's all I know.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Title Omitted in Printing)

EXCERPTED DEPOSITION OF
ARABELLA ANN MAXEY JOYNER

Tucson, Arizona

October 26, 1990

* * * *

[38] Q. Now, if a prisoner in CDU wants a certain case, is the book brought to him, or a copy of the case?

A. A copy of the case, if he requests a certain case.

Q. And does he have to pay for the photocopy of that case?

A. If he is indigent, no. If he is not indigent, he—we are not totally consistent on that. Sometimes we just go ahead and copy the case, with the understanding that he will return it to us.

If it's something that he feels that he needs, we will send a funds disbursement. He has an option of whether or not he wants to have the case and copy the case, in which case he fills out a funds disbursement, or whether he wants to have it for a week and send it back. And then we keep a file of the ones that are frequently requested.

Q. Now, when he requests a case, does he have to know the cite of the case?

A. Yes, or give us a very good lead. And if they will give us a good lead, we have even Shepardized.

Q. When you say, "give a good lead," what do you mean?

A. This area, I think it may be in there, in there. Things pertaining to—whatever.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Title Omitted in Printing)

EXCERPTED DEPOSITION OF J. C. KEENEY

Phoenix, Arizona

November 14, 1990

* * * *

[77] Q. Why was that?

A. Probably an order out of Gluth, one of the early orders.

Q. For the CSOs who staff the law libraries, do they receive any training before they assume that duty?

A. I don't know.

Q. Do they receive any testing before they assume that duty?

A. I don't know that either.

Q. Is there any statewide policy on either training or testing for CSOs in law libraries?

A. No.

Q. How about the prisoner clerks to work in the law library, do they receive any training before they assume that post?

A. I don't know that.

Q. Do they receive any testing before they assume that post?

A. I don't know that either.

Q. Is there a statewide policy on training or testing for prisoner law library clerks?

A. Not that I am aware of.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Title Omitted in Printing)

**EXCERPTED DEPOSITION OF
STEVEN KENNETH SLOBODA**

Douglas, Arizona

October 29, 1990

* * * *

[33] Q. Let me go back up to the library just for one minute. Is there a limit placed on the numbers of prisoners that can be in either one of the law libraries?

A. Not that I am aware of, no.

Q. Have you heard of any complaints from prisoners or staff that prisoners are having problems getting access to the law library?

A. No.

Q. For the prisoners in lockup, you indicated that they have to make a request and that request is filled within 24 hours?

A. Uh-huh.

Q. You are saying "yes"?

A. Yes.

Q. How specific do they have to make their requests in order to get it filled? Do they have to give the cite of the case that they want?

A. Yes, I believe they do.

Q. Is there, to your knowledge, a law clerk assigned to the segregation unit?

A. No.

Q. No, there is not?

A. No, there is not.

* * * *

TRIAL TRANSCRIPT

November 22, 1991

* * * *

[198] A: It says:

"Arizona Department of Corrections Summary of Education Activity."

And then down in the middle it says:

"Reception test data, September 1989, Reading Scores Wide Range Achievement Test."

And then lists what looks like to be test results from a reading test.

Q: Does that document, from your review, indicate what the reading levels are at Department of Corrections, of the prisoners?

A: It indicates that, if I'm reading this correctly, of the—that 15 percent of the prisoners read at grade level three, four percent at grade level four, five percent at grade level five, four percent at grade level six, seven percent at grade level seven, 11 percent at grade level eight—

Q: If I do—

A: —etcetera.

Q: —a quick addition here, does that comes up to about 46 percent of prisoners read at a grade level of 8th grade or less?

A: 18, 27, 31, yes. According to this it would be 46 percent are 8th grade reading level or less. Yes.

Q: From your experience, a prisoner who reads at an 8th [199] grade level, how does that impact on his or her ability to use a law library?

A: There's no way a prisoner with an 8th grade reading level can adequately use a law library, or anyone, in my opinion, in my experience.

MR. ADAMS: The Court's indulgence.

(Pause)

MR. ADAMS: No further questions.

MR. STRUCK: No questions, Your Honor.

THE COURT: None? All right. Thank you. You're excused.

THE WITNESS: Thank you.

THE COURT: You want the witness excused for—

MS. AIYETORO: Yes, Your Honor.

THE COURT: Okay. Any objection?

MR. STRUCK: No objection.

THE COURT: All right. Okay. Next witness please.

MS. AIYETORO: Your Honor, we have no more witnesses for today. We will have Dr. Charles Braslow on Monday morning.

THE COURT: Well, okay. Anything else we need to take care of?

MS. AIYETORO: No.

THE COURT: Do try to have witnesses here though because, you know, the time is precious.

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TRIAL TRANSCRIPT

December 18, 1991

* * * *

[282] Q: And the postmark was long—

A: 20 days prior.

Q: And was the letter properly addressed?

A: Yes, it was.

Q: Now have you ever been a disciplinary representative?

A: Yes, I have.

Q: What does a disciplinary representative do specifically?

A: They assist other inmates in the preparation of their case before the disciplinary—institutional disciplinary proceedings.

Q: Okay. Now how do you get to be a disciplinary representative?

A: You apply.

Q: And do you have to take an examination?

A: No.

Q: Do you receive any training?

A: No.

Q: Do you receive any training in the law library use?

A: No.

MS. BENDHEIM: Now, Your Honor, at this point I would move to the offer of proof.

THE COURT: All right.

BY MS. BENDHEIM:

Q: Are you acquainted with Doreen Romney?

A: Yes, I am.